

**FREE STANDING ADVERTISEMENTS AND
OPERATIONS (6-SHEET ADVERTISING)
CONTRACT**

LONDON BOROUGH OF SOUTHWARK

CONDITIONS OF CONTRACT

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1 Definitions and Interpretation

1.1 In these Conditions, except where the context otherwise requires, the words or phrases in the first column below shall have the meanings set opposite them in the second column:

Abandons	Means not to carry out any Services for 20 consecutive Working Days or during 60 Working Days (whether consecutive or not) in any Contract Year and/or not to provide substantially all the Services for 15 consecutive Working Days or 30 Working Days (whether consecutive or not) in any Contract Year, except where relieved of the obligation to do so by the express provisions of this Contract.
Act of Frustration	means such act or omission of the Concession Holder (whenever performed) which is intended, is likely to, or does actually have the effect of discouraging other providers from tendering for the Contract as successor to the Concession Holder. Such Acts of Frustration include (but are not limited to): <ul style="list-style-type: none"> (i) offering a pay award or other changes in terms and conditions which will apply following a transfer of staff to another employer; (ii) transferring staff with a poor employment history into area(s) covered by the Contract other than for genuine workforce reasons; (iii) transferring staff with an excellent employment history out of area(s) covered by the Contract other than for genuine workforce reasons.
Annual Service Review Date	1 st April 2023 and thereafter annually on the anniversary of this date.
Annual Service Review	a review of the Services as set out in Condition 16.4.
Authorised Officer	a person holding any office specified in Schedule 1.
Council	the Mayor and Burgesses of the London Borough of Southwark and its successors, or permitted assignees.

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Commencement Date	0.01am on 1 st April 2022 on which date the provision of the Services under this Contract by the Concession Holder shall commence.
Concession Holder	the Tenderer whose Tender is accepted by the Council and who accordingly enters into the Contract.
Concession Holder's Employees	those employees of the Concession Holder whose contracts of employment are likely to be transferred to the Council or the New Concession Holder on termination of this Contract pursuant to TUPE or any re-enactment or replacement thereof.
Concession Holder's Equipment	all equipment (other than the Council Equipment) required for the proper provision of the Services and the performance by the Concession Holder of its obligations under the Contract.
Conditions	these conditions including the Schedules attached.
Conditions of Tendering	the conditions attached to the Tender.
Contract	the agreement between the Council and the Concession Holder comprising the articles of agreement (if required by the Council), the Tender, these conditions, the Specification, the Pricing Schedule and any other documentation specified to form part of the contract in the articles of agreement.
Contract Manager	the person appointed by the Concession Holder in accordance with Condition 23.
Contract Period	the period specified in Condition 4.
Contract Price	the amount to be paid by the Concession Holder to the Council in accordance with the provisions of the Contract.
Contract Standard	carrying out the Services:

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- (a) to the Service Standards and in accordance with the Specification, the Method Statements, and all other relevant provisions of the Contract;
- (b) in accordance with the timetabling requirements set out in the works schedule/programme;
- (c) in a good, safe and competent manner and free from dishonesty and corruption and in accordance with Good Industry Practice;
- (d) in a manner which is not, and is not likely to become, injurious to health or detrimental to the environment or to any property in the area where the Services are being performed;
- (e) in a manner which shall promote and enhance the image and reputation of the Council;
- (f) in compliance with all relevant Acts of Parliament, statutory regulations, orders and codes of practice;
- (g) in accordance with the Council's policy in respect of the Services;
- (h) in absolute co-operation with the Council and its contractors and all other persons employed at the Location.

Contract Year	Means each 12 month period from the Commencement Date.
Council Employee	Any person employed directly by the Council immediately before the date of the Relevant Transfer and engaged in the provision of those services identified in the Specification for inclusion in the Services.
Council Equipment	all equipment, materials and utensils which are provided by the

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Council, in situ at the Locations or Premises or otherwise on the Commencement Date and used by the Council in the provision of the Service prior to that date.

Expiry	The expiry of this Contract through the passage of time.
Force Majeure	an event beyond the reasonable control of the affected party, which does not relate to its fault or negligence. Force Majeure includes (but only to the extent not relating to its fault or negligence) but is not limited to acts of God, war, terrorist activity, rebellion, local or national emergency, riots, fire or flood. Force Majeure does not include strikes or other industrial action by employees of the affected party or its agents or sub-contractors, or any act or matter caused by the inadequacy or breakdown of equipment, or the failure of supplies or suppliers.
Good Industry Practice	Means that degree of skill, care, prudence, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Concession Holder or any sub-contractor) under the same or similar circumstances.
Information	all data, record, document or information and intellectual property in whatever form given to, produced or acquired by the Concession Holder and however stored for the purpose of providing the Services and carrying out its obligations under the Contract.
Intellectual Property Rights	Any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto.

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Legislation	In relation to the United Kingdom: <ul style="list-style-type: none"> • Any Act of Parliament; • Any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978; • Any exercise of the Royal Prerogative;
Location	each of the locations (or as the case may be) groups of locations identified in the Specification where the Services are carried out.
Minimum Guaranteed Sum	shall mean the sum payable to the Council and defined in section 4 of the Specification that forms Schedule 2 to these Conditions.
New Concession Holder	a service provider other than the Concession Holder appointed to provide the Services or any part of the Services following the expiry or early termination of the Concession Holder's employment under the Contract.
New Employees	Those new employees employed by the Concession Holder to provide the Services who will be working alongside the Transferring Employees
Premises	shall mean any premises owned or managed by the Council which is the subject of a lease or licence to the Concession Holder from time to time for the provision of the Services.
Pricing Schedule	the pricing schedule that forms Schedule 3 to these Conditions;
Relevant Transfer	A relevant transfer for the purposes of TUPE.
Services	the operation and management of a digital 6 sheet advertising concession within the London Borough of Southwark that is to be performed by the Concession Holder under the terms of the Contract, details of which concession are more particularly set out in the Specification and the Tender.
Service Standards	the required performance standards of the Concession Holder

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set out in the Specification.

Specification	the Specification that forms Schedule 2 to these Conditions and forming part of the Contract which describes the Services to be provided and defines the quality required under the Contract, as may be amended from time to time subject to the provisions of this Contract.
Tender	the Form of Tender, together with any Appendices and/or Pricing Document, the Conditions of Tendering and Method Statements.
Tenderer	any person who is invited to and does submit a Tender.
Termination	The Termination of this Contract in accordance with Condition 40.
Transferring Employees	Those Council employees and any other employees whose contracts of employment transfer to the Concession Holder pursuant to TUPE.
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) and any subsequent amendments thereto.
Variation	a variation to this Contract and or the Specification agreed or determined in accordance with Condition 47.
Working Day	shall mean any day other than a Saturday or Sunday, Christmas Day or Good Friday and other than a bank holiday in England within the meaning given by Section 1 of the Banking and Financial Dealings Act 1971.

1.2 Words importing one gender shall include the other genders, words in the singular shall include the plural and vice versa and words importing individuals shall include corporations and vice versa;

1.3 Headings are for ease of reference only and shall not affect the construction of the Contract;

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- 1.4 References to personnel of the Concession Holder shall include references to all persons engaged by the Concession Holder in the performance of the Services and (if the context permits) references to the personnel and supervisory staff of any sub-contractor of the Concession Holder;
- 1.5 Stipulations as to time of payment by the Council to the Concession Holder are not of the essence of the Contract but other stipulations as to time are of the essence;
- 1.6 References to Legislation and any code of practice, guidance or other similar instrument shall be construed as a reference to any Legislation, code of practice, guidance or instrument as amended, replaced, consolidated or re-enacted
- 1.7 No review, comment or approval by the Council under the provisions of this Contract shall operate to exclude or limit the Concession Holder's obligations or liabilities under this Agreement or the Council's rights under this Contract.

2 Warranties

- 2.1 The Concession Holder, on the execution of the Contract and throughout the Contract Period, warrants and represents to and undertakes with the Council in the terms set out in the Conditions of Tendering.

3 Not Used

4 Commencement and Contract Period

- 4.1 The Contract shall commence on the Commencement Date and shall continue in force for ten (10) years from the Commencement Date, subject to earlier termination in whole or in part in accordance with these Conditions;
- 4.2 During the thirty (30) day period prior to the Commencement Date:
 - 4.2.1 the Concession Holder shall, within seven (7) days after receipt of a request from the Council, provide the Council with a written report giving full details of the steps taken and planned to be taken to implement the Services on the Commencement Date, including any steps required to transition from the previous contractor's equipment and shall promptly provide such further details and information as the Council may reasonably request;
 - 4.2.2 the Council may require the Concession Holder to do such things as the Council may reasonably require to show that the Concession Holder's systems and practices are commissioned and fully tested, so that the Concession Holder will on the Commencement Date be in a position fully and properly to fulfill its obligations under the Contract. This shall be without prejudice to the Council's remedies in the event of any default or breach of any of the terms of the Contract on or after

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the Commencement Date;

- 4.2.3 The Concession Holder shall obtain all requisite approvals/licences to enable it to provide the Services from the Commencement Date. Such approvals/licences are to be maintained by the Concession Holder throughout the Contract Period;
- 4.2.4 (if applicable) the Concession Holder shall at its own expense secure a licence from the Council to maintain and operate digital advertising apparatus in the Highway.

5 Services

- 5.1 The Concession Holder shall perform the Services at the Locations to the Contract Standard from the Commencement Date to the end of the Contract Period;
- 5.2 The Concession Holder shall operate a quality system in the provision of the Services as set out in the Specification.

6 Service Standards

- 6.1 The Concession Holder shall achieve the Service Standards set out in the Specification in carrying out the Services;
- 6.2 If the Concession Holder's performance fails to meet these Service Standards, the rights of the Council set out in Condition 40– Default and Termination, may become exercisable;

7 Complaints and Correspondence

- 7.1 Persons may write to or wish to put suggestions, raise comments or make complaints to the Concession Holder. The Concession Holder shall deal promptly with such matters as fall within the scope of the Services and shall provide such information or assurances as may be required. Where such matters fall outside the scope of the Services the Concession Holder shall forward to an Authorised Officer within five (5) working days the correspondence received or details of any suggestion or complaint;
- 7.2 The Concession Holder shall provide promptly to the Council copies of all complaints and correspondence arising in relation to the performance by the Concession Holder of the Services and provide such reasonable statistical information as the Council may from time to time require;
- 7.3 The Council may request information or documents from the Concession Holder in connection with suggestions, comments or complaints. The Concession Holder shall provide all such information and documents as quickly as possible and in any event no later than ten (10) working days following the request being made;
- 7.4 If a person elects to use the Council's complaints procedures, the Concession Holder shall co-operate with the Council in connection with any investigations undertaken by the Council;
- 7.5 If comments or complaints are made through any call centre established by the Council, the

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Concession Holder shall in addition to the requirements under this Condition 7, also comply with any additional requirements notified;

- 7.6 The Concession Holder shall co-operate with the Council in connection with any complaints or investigations undertaken by the Council or a third party acting on its behalf.

8 Compliance with law and procedures

- 8.1 The Concession Holder shall at all times in performing the Services or otherwise howsoever in connection with this Contract:

- 8.1.1 comply with all relevant Legislation and Guidance and any Codes of Practice or Procedure issued by the relevant professional and/or other trade associations;
- 8.1.2 comply so far as is appropriate with all the Council's relevant rules, codes, policies, procedures and standards notified from time to time during the Contract Period by the Council to the Concession Holder, including in particular the Council's financial regulations and standing orders;
- 8.1.3 take all reasonable steps to ensure the Council's interests are protected at all times, in particular by ensuring that all systems and procedures adopted by the Concession Holder for carrying out the Services are in accordance with Good Industry practice;
- 8.1.4 not unlawfully discriminate within the meaning of the Equality Act 2010 (and insofar as they remain in force, the Race Relations Act 1976 (as amended), the Race Relations (Amendment) Act 2000, the Sex Discrimination Act 1975, the Disability Discrimination Acts 1995 and 2005 or any comparable statutory provision relating to discrimination in employment or service provision and will ensure that all employees agents and sub-contractors do not unlawfully discriminate, and will comply with all relevant codes of practice issued by the Equality and Human Rights Commission or any comparable body and so far as practicable operate an equal opportunities policy which complies with the practical guidance and recommendations contained in such codes of practice;
- 8.1.5 adopt safe methods of work and comply with all other requirements of the Health and Safety at Work Act 1974 in order to protect the health and safety of its personnel and to the extent applicable the personnel of the Council and all other persons; and
- 8.1.6 take all reasonable steps to ensure that the systems and procedures adopted by the Concession Holder in the performance of the Services are in accordance with and take account of the provisions of the Human Rights Act 1998 and the Modern Slavery Act 2015 and any other applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force. .

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- 8.2 No payment will be made for any part of the Services omitted because of a stoppage required by the Council as a result of a breach of the Council's policy by the Concession Holder and neither will any additional payment be made for steps which the Council reasonably requires the Concession Holder to take for policy reasons;
- 8.3 Any impact upon the provision of the Services by the Concession Holder during the Contract Period arising directly as a result of changes in legislation or regulations whether pursuant to an Act of Parliament or any regulation or other subordinate legislation issued pursuant to an Act of Parliament, or any regulation issued by any appropriate body to the extent in each case that such legislation or regulation applies specifically only to the out-of-home media sector shall be subject to a Variation issued under Condition 47 and the Contract Price shall be increased by agreement between the parties to reflect any additional costs of that Variation;
- 8.4 Any impact upon the provision of the Services by the Concession Holder during the Contract Period arising directly as a result of changes in legislation or regulations whether pursuant to an Act of Parliament or any regulation or other subordinate legislation issued pursuant to an Act of Parliament, or any regulation issued by any appropriate body to the extent in each case that such legislation or regulation applies generally and not only to the out-of-home media sector shall be complied with by the Concession Holder but will not be subject to a Variation issued under Condition 47 and the Contract Price will not be amended.

9 Data Protection

- 9.1 Without prejudice to the specific requirements noted in this condition 9 each party will comply with the requirements of the General Data Protection Regulation 2016/679 (GDPR) as tailored by the Data Protection Act 1998 (the DPA) and any equivalent or associated legislation in relation to the provision of the Services, and will not knowingly do anything or permit anything to be done which might lead to a breach by the other party of the GDPR or DPA;
- 9.2 In relation to all Personal Data (as defined in the GDPR and DPA) and held as a result of this Contract, the Concession Holder shall at all times comply with the GDPR and DPA as a data controller (as defined in the GDPR and DPA) and, if necessary, including maintaining a valid and up to date registration or notification under the GDPR and DPA covering the data processing to be performed in connection with the Services;
- 9.3 The Concession Holder shall not disclose Personal Data to any third parties other than:
- 9.3.1 to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Concession Holder to carry out the Services;
 - 9.3.2 to the extent required under a court order,
 - 9.3.3 disclosures made with the data subject's express written consent, or

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- 9.3.4 in accordance with such data protection protocols, for the time being in force, as shall be provided to the Concession Holder by the Council

provided that disclosure under Condition 9.3.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Condition and that the Concession Holder shall give notice in writing to the Council of any disclosure of Personal Data it is required to make under Condition 9.3.2 immediately it is aware of such a requirement;

- 9.4 The Concession Holder shall only undertake processing (as defined in the GDPR and DPA) of Personal Data reasonably required in connection with the Services;
- 9.5 All processing of personal data undertaken by the Concession Holder in accordance with this Contract shall at all times comply with the eight Data Protection Principles under the GDPR in accordance with the interpretation or view of the Council from time to time notified in writing to the Concession Holder. In particular, the Concession Holder shall:
- 9.5.1 ensure that, subject to any exemption under the GDPR, all processing of Personal Data is done fairly and lawfully;
 - 9.5.2 ensure that Personal Data processed for the purposes of this Contract is not used for any other purpose or provision by or on behalf of the Concession Holder;
 - 9.5.3 ensure that all Personal Data processed for the purposes of this Contract is no more than is necessary for the purposes of the Services;
 - 9.5.4 ensure that checks are undertaken to ensure accuracy of the Personal Data maintained for the purposes of the Services;
 - 9.5.5 ensure that Personal Data maintained for the purposes of the Services is not kept for any longer than is necessary, in accordance with guidelines which shall be provided from time to time by the Council;
 - 9.5.6 ensure that it is fully able to comply with all of the rights of Data Subjects under the GDPR and DPA, including the ability to comply with data subject access requests within the statutory maximum period, whether such requests are received by the Concession Holder or by the Council. If such requests are received by the Council, they will be forwarded to the Concession Holder promptly. The Concession Holder shall notify the Council of all notices received from Data Subject, which appear to or purport to exercise that persons rights under the GDPR and DPA, promptly;
 - 9.5.7 bring into effect and maintain technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to take reasonable steps to ensure the reliability of staff having access to the Personal Data and, in particular, with regard to sensitive personal data as defined in the

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GDPR:

- 9.5.8 comply with the provisions of BS7799;
 - 9.5.9 within 30 days of a written request from the Council, supply written particulars of all technical and organisational methods employed by the Concession Holder, detailed to a reasonable level such that the Council can determine whether or not, in connection with the Personal Data, it is compliant with the GDPR. Such written requests shall only be made at reasonable intervals, and
 - 9.5.10 not transfer any Personal Data to any country or territory outside the European Economic Area without the express written consent of the Council.
- 9.6 All forms used in connection with the collecting of data for the purposes of the Services shall only be those approved for the purpose or provided by the Council;
- 9.7 All notices, requests or correspondence received by the Concession Holder with regard to the Services shall immediately be copied to the Council. The Concession Holder shall at all times cooperate with the reasonable requests of the Council in responding to such notices, requests or correspondence;
- 9.8 All employees or sub-contractors of the Concession Holder who have access to Personal Data for the purposes of the Council shall be trained in data protection to accord with the requirements of this Contract;
- 9.9 Without prejudice to the Concession Holder's general obligations to provide data and information to the Council on request, the Council shall be entitled to request, and the Concession Holder shall provide within a reasonable time, employment and relevant personal information in relation to the Concession Holder's employees for the purposes of anti-fraud measures such as data matching. The Concession Holder shall ensure that it takes any measures necessary pursuant to the GDPR and DPA and any other relevant legislation to facilitate such disclosure lawfully and fairly;
- 9.10 The Concession Holder shall comply with all reasonable requests of the Council with regard to any Data Protection matter, including allowing the client, or any agent or auditor to undertake data protection audits of the processes or systems in place with regard to the Services;
- 9.11 The Concession Holder shall at all times accept the interpretation or understanding of data protection matters and law as shall be notified to it by the Council for the purposes of the Services;
- 9.12 The Concession Holder shall indemnify and keep indemnified the Council against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Condition by the Concession Holder and/or any act or omission of any sub-contractor.

10 Best Value

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- 10.1 The Council is obliged to carry out its duties in accordance with the statutory duty of “Best Value” in accordance with the provisions of the Local Government Act 1999, the Local Government (Best Value) Performance Plans and Reviews Order 1999 (as amended) and all other statutory guidance (“the Duty of Best Value”);
- 10.2 The Concession Holder acknowledges that the Council is subject to the Duty of Best Value;
- 10.3 In order to assist the Council in complying with the Duty of Best Value in respect of the Services, the Concession Holder shall use all reasonable endeavours to comply with the provisions of this Condition and shall undertake or refrain from undertaking such actions as the Council shall request from time to time by written notice to the Concession Holder to enable the Council to comply with the Duty of Best Value in respect of the Services, including:
- 10.3.1 actively to promote, support and assist the Council to comply with its duty of Best Value in respect of the Services, and
 - 10.3.2 to comply with all reasonable requests by the Council for assistance in preparing its Best Value Performance Plans in respect of the Services, and
 - 10.3.3 to comply (as soon as reasonably practicable) with any request for information, data or other assistance made by the Council in pursuance of its Duty of Best Value in respect of the Services;
- 10.4 Requests made under clause 10.3.3 include any request:
- 10.4.1 to facilitate an inspection to establish whether the Council has complied with its Duty of Best Value in respect of the Services pursuant to Part 1 of the Local Government Act 1999;
 - 10.4.2 to assist the Council in the event of any action being taken by the Secretary of State pursuant to Section 15 of that Act;
 - 10.4.3 to assist the Council in complying with the Publication of Information Direction 1999 in respect of the Services;
 - 10.4.4 to assist the Council with resident and other user consultation;
- 10.5 The Concession Holder will also assist the Council (where required) in relation to the completion and submission of statutory and other internal and external financial statistical returns and the preparation of internal and external reports (and without prejudice to the generality of this condition) such returns include those to CIPFA, the Audit Commission and the preparation of the statutory and the Council’s own voluntary performance indicators, and any additional or new returns arising from the requirement of Best Value in the delivery of the Services;
- 10.6 The parties will seek to agree a mutually acceptable method of evaluating whether Best Value is being delivered by the reasonable provision of information and (without prejudice of the generality of this sub-condition) the Concession Holder will co-operate with any benchmarking exercises undertaken by the Council;

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- 10.7 The parties agree to work together in agreeing how to deliver any changes to the Services which arise out of or are recommended by the outcome of a Best Value Review, Best Value Inspection, or other Best Value process, and it is agreed that any changes which the Concession Holder will be required to implement will be dealt with in accordance with the provisions of Condition 47– Variation of the Services;
- 10.8 For the avoidance of doubt, all information supplied by the Concession Holder pursuant to this condition may be published by the Council as part of its best value procedures.

11 Not Used

12 Intellectual Property Rights

- 12.1 The Concession Holder warrants that in the performance of this Contract it shall not infringe any Intellectual Property Rights of any third party;
- 12.2 The Concession Holder shall be responsible for and shall fully indemnify the Council, its employees, agents and contractors against all losses, action, claims, proceedings, expenses, costs and damages of whatsoever nature arising out of the breach of warranty in Condition 12.1 above;
- 12.3 Either party shall promptly notify the other when it becomes aware of any Intellectual Property Right claim being brought or any liability arising under this Condition 12;
- 12.4 The Concession Holder shall defend, at its expense, any claim or action brought against the Council alleging that goods materials or services supplied in accordance with this Contract infringe any Intellectual Property Rights and shall pay all costs and damages finally awarded, provided that the Council gives the Concession Holder written notice within thirty (30) days of such claim coming to its attention and all the information and assistance reasonably required (subject to the Concession Holder reimbursing the Council for any reasonable costs and expenses incurred in doing so) and sole authority to defend or settle. In the defence or settlement of the claim, the Council may at its sole discretion give to the Concession Holder the right to continue using the goods, materials or services or replace or modify them so that they become non-infringing, but nothing shall compel the Council to give such right. In the event that such remedy is not reasonably available the Concession Holder shall indemnify the Council for all losses costs damages and expenses incurred as a result of the Concession Holder's failure to comply with this Condition 12.3;
- 12.5 All copyright other proprietary rights in all work produced by the Concession Holder under this Contract shall be vested solely with the Council.

13 Documents and Information

- 13.1 The Concession Holder shall at all times during the Contract Period and for a period of six (6) years afterwards keep secure and give to or make available for inspection by the Council, its

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internal auditors and the District Auditor, all original and copy records, documents, information, statements and papers which may be acquired or produced by the Concession Holder or any permitted sub-contractor in the performance of the Services. In default of compliance, the Council may recover possession of such materials and the Concession Holder licences the Council or its approved agents to enter for those purposes any premises of the Concession Holder or its permitted sub-contractors where any such materials may be held;

- 13.2 The Concession Holder shall give the Council such information and access to and copies of documents as the Council may reasonably require to satisfy itself as to the Concession Holder's compliance with Condition 8.1 – Compliance with Law and Procedures;
- 13.3 Where the Council requires any information or documentation from the Concession Holder relating to any potential or actual claim by a third party against the Council, the Concession Holder shall ensure that any information or documentation requested by the Council is supplied to the Council in sufficient time to enable the Council to comply with any requirements of the Civil Procedure Rules 2000 (as amended) or any other procedural rules relating to such actions.

14 Accounts

- 14.1 The Concession Holder shall throughout the Contract Period make available to the Council within thirty (30) days after the formal adoption thereof its audited accounts together with any internal control reports produced by its auditors.

15 Confidentiality

- 15.1 All Information (except as detailed in Condition 15.4) is confidential. The Concession Holder shall not, during the Contract Period or afterwards (except as may be required by law or as directed by the Council or the District Auditor or as requested in order to undertake the Services) disclose Information to any third party or use Information for any purpose other than as strictly necessary to provide the Services. The Concession Holder shall ensure that any of its employees or other persons involved in providing the Services is bound by an undertaking in the same terms;
- 15.2 The Concession Holder shall use its best endeavours to prevent disclosure of the Information, and shall keep proper security arrangements against the destruction, loss or unauthorised use or alteration of Information. Such arrangements shall ensure that access to Information is only obtained by such officers of the Council as are specifically designated by the Council. The Concession Holder shall restore at its own expense Information which is destroyed or in respect of which an unauthorised alteration is made;
- 15.3 The obligations of confidentiality set out in Condition 15 shall not apply to Information which:

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- is in, or comes into, the possession of the Concession Holder other than as a result of a breach of this Contract;
- is, or comes into, the public domain other than as a result of a breach of this Contract;
- Is strictly necessary for the Concession Holder to undertake the Services;

15.4 The Concession Holder may not make any press announcements or publicise this Contract in any way without the prior written consent of the Council.

15.5 The Concession Holder accepts that the Council is obliged to comply with the Freedom of Information Act 2000 and the Code of Practice on the Act (collectively “the Act and Code”), and will assist the Council to comply with its obligations under the Act and Code. This includes helping the Council comply with its obligation to respond to a request for information (“Information Request”) within 20 days of receipt; and providing information to the Council where the Council requests.

15.6 The Council is entitled to disclose information unless it believes that the information is Exempt under the Act. Exemption may apply where, for example, information is provided in confidence; where the information is a trade secret; or where release is likely to prejudice commercial interests. The Council will decide, acting reasonably, whether information requested under the Act is to be disclosed or not. The Council will where reasonably practicable consult the Concession Holder and will consider any representations made by the Concession Holder. The Council shall not be liable for any loss or other detriment caused by the disclosure of any information.

16 Monitoring Systems

16.1 The Concession Holder shall institute at the Commencement Date and maintain and keep under review throughout the Contract Period systems designed to ensure that the Services are performed to the Contract Standard. Such systems shall be operated by the Contract Manager on behalf of the Concession Holder and shall include:

- 16.1.1 day to day liaison with an Authorised Officer nominated by the Council;
- 16.1.2 the Contract Manager and an Authorised Officer meeting on a regular basis (but at least quarterly) during the Contract Period to review the provision of the Services by the Concession Holder;
- 16.1.3 compliance with any instructions issued by an Authorised Officer;
- 16.1.4 keeping records in respect of the provision of the Services:
 - 16.1.4.1 to ensure that any costs charged to the Council in respect of the Services are properly recorded, identified and auditable;
 - 16.1.4.2 to ensure that any costs rechargeable to Council Departments in respect of the Services are properly recorded, identified and auditable;
 - 16.1.4.3 of the nature, quality and quantity of all work carried out by the

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Concession Holder in the performance of the Services;

- 16.1.4.4 to ensure the Services are provided in a proper and timely fashion;
- 16.1.4.5 which are otherwise required by the Conditions and the Specification;
- 16.1.4.6 to ensure all records are available for inspection by the Council (or any person nominated by it) at all times;
- 16.1.5 devising, implementing and managing procedures to ensure it complies with its obligations contained in Condition 7 (Complaints and Correspondence);
- 16.1.6 the implementation of such systems as shall be necessary to eliminate, so far as practicable, and protect the Council from fraud, corruption, error and mistake by the Concession Holder or its staff. The Concession Holder shall notify the Council immediately if fraud, corruption or substantial errors are suspected, and shall permit the Council to audit such systems and shall provide the Council with all necessary access and facilities for that purpose;
- 16.1.7 the implementation of such other requirements of the Council to implement, maintain or improve the Contract Standard; and
- 16.1.8 the assistance to the Council and the undertaking of any monitoring of the Services or Customers which the Council shall require the Concession Holder to effect in order for the Council to fulfil any of its statutory obligations, including without limitation to its obligations under the Race Relations Amendment Act 2000;
- 16.2 If an Authorised Officer makes a written recommendation concerning the modification of the system maintained by the Concession Holder in accordance with Condition 16.1, the Concession Holder shall implement such recommendation as soon as reasonably practicable and in any event within twenty-eight (28) days;
- 16.3 The operation of the system maintained by the Concession Holder in accordance with Condition 16.1 with any modifications implemented pursuant to Condition 16.2 shall not prejudice any rights or remedies the Council may have in respect of any failure by the Concession Holder to perform its obligations in accordance with the terms and conditions of the Contract;
- 16.4 The Concession Holder shall undertake and prepare a draft Annual Service Review to be submitted to the Authorised Officer on the Annual Service Review Date, which shall review the Services against agreed performance indicators and set targets for improvement. Without prejudice to this requirement, the Concession Holder shall, as soon as reasonably practicable, provide an Authorised Officer with any information relating to the carrying out of the Services which he may reasonably request at any time;
- 16.5 The Council may elect to undertake its own performance monitoring at any stage during the Contract Period or any purpose, including but not limited to the following:
 - 16.5.1 In order to ensure that the Services are being provided in accordance with

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this Contract; and

16.5.2 To ensure that the Concession Holder is complying with the provisions of the Cabinet Office Principles of Good Employment Practice;

16.6 The Concession Holder will use its reasonable endeavours to assist the Council in any performance monitoring exercises under condition 16.5. Without prejudice to the Council's other rights under this Contract, the Council shall be entitled to notify the Concession Holder of the outcome of the performance monitoring exercise and the Concession Holder shall have due regard to the Council's comments in relation to the future provision of the Services.

17 Partnership

17.1 The Concession Holder and the Council acknowledge the benefits if this Contract is performed in the spirit of co-operation and partnership. Accordingly, the parties will work closely together to achieve the following principles:

- **Shared Vision** – both parties must have a mutual understanding of each other's objectives and a shared commitment to achieving them,
- **Mutual Trust** – both parties shall develop an attitude and relationship of mutual trust,
- **Commitment** – both parties shall commit to making the relationship work and must commit senior management to make the relationship work,
- **Communication** – both parties shall ensure effective communication between the parties,
- **Flexibility** – both parties shall have a shared recognition of the likelihood of unforeseen change and a joint commitment to flexibility and responsiveness in such circumstances.

17.2 Nothing in this Agreement shall create or be deemed to create a legal partnership or the relationship of employer and employee between the Parties.

18 Liaison and Co-operation

18.1 In performing its duties under the Contract and in doing all things incidental to its performance, the Concession Holder shall liaise and co-operate with all personnel and contractors of the Council and all other persons carrying out duties relating to the Services;

18.2 The Concession Holder shall at all times during the Contract Period and for a period of six (6) years afterwards fully co-operate with any enquiry or investigation (whether routine or specific) which in any way concerns, affects or relates to the Services, or any sum claimed or charged in relation to the Contract or to any other contract of the Council. Such enquiry or investigation may include, inter alia:

18.2.1 the Council's Executive and the Council's Overview and Scrutiny Committee and scrutiny sub-committees undertaking their respective functions;

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- 18.2.2 an investigation by the Council into a complaint about the acts or omissions of the Concession Holder, its employees or agents made under the Race Relations Act 1976 (as amended) and the Race Relations Amendment Act 2000;
 - 18.2.3 the Council's auditors (whether internal or external);
 - 18.2.4 the Local Government Ombudsman.
- 18.3 Such co-operation shall include (but not be limited to) the following:
- 18.3.1 providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, (in hard copy format or otherwise) which relate to the subject or service under investigation;
 - 18.3.2 providing access to the premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Concession Holder in the performance of the Contract;
 - 18.3.3 providing access to the Concession Holder's staff (of whatever seniority) involved in the Contract (including managerial or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the ombudsman (including providing suitable facilities for interviewing such staff);
 - 18.3.4 maintaining the confidentiality of the enquiry or investigation when requested to do so;
 - 18.3.5 making such explanations as may be necessary for the enquiry or investigation to be satisfied that the terms and conditions of the Contract, the Council's standing orders and financial regulations and statutory provisions relating to the Contract are being complied with.
- 18.4 The Concession Holder shall, if requested by the Council, co-operate with the Council, at its own expense, in connection with any legal proceedings, arbitration, court proceedings or ombudsman enquiries in which the Council may become involved, arising from breaches of the Council's duties under the Race Relations Act 1976 (as amended) and the Race Relations Amendment Act 2000 due to the alleged acts or omissions of the Concession Holder, its employees, sub-contractors or agents;
- 18.5 The Concession Holder shall ensure that the terms of any sub-contract include identical provisions to this Conditions 18 and shall indemnify the Council against any losses, damages or claims it suffers in consequence of a failure to ensure the inclusion of such identical items.

19 Consequences of an Enquiry or Investigation

- 19.1 The Concession Holder shall indemnify the Council in respect of any loss, damage, compensation, fines and costs which the Council or any third party may have suffered or which is ordered, awarded or recommended to be paid by any court, tribunal or ombudsman in connection with a breach of the Race Relations Act (as amended);

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- 19.2 Where the results of an enquiry or investigation identifies losses, damages or claims incurred by the Council in consequence of a breach of contract by the Concession Holder or any sub-contractor, the Council shall be entitled to deduct from any sums held by the Council (and which would otherwise be payable to the Concession Holder) both the value of such losses, damages or claims attributable to the Concession Holder and the cost of the enquiry or investigation. Where the Council does not hold any such sums for which deductions may be made, such sums may be recovered from the Concession Holder as a civil debt, or from any sum held by the Council in relation to any other contract between the Council and the Concession Holder;
- 19.3 Where the Ombudsman in their report clearly identifies the Concession Holder, or any sub-contractor of the Concession Holder, as being wholly or partly responsible for any maladministration or other failure then any compensation paid or the value of any other benefit given by the Council to any person arising from such ombudsman report may be deduction from such sums as would otherwise be payable to the Concession Holder. Where the Concession Holder (whether in its own right or vicariously on behalf of any sub-contractor) is partly responsible, a suitable proportion of any compensation or the value of any benefit may be deducted by the Council. Where the Council does not hold any such sums for which deductions may be made, such sums may be recovered from the Concession Holder as a civil debt, or from any sum held by the Council in relation to any other contract between the Council and the Concession Holder;
- 19.4 For the purposes of Condition 19.3 “compensation paid” means such sum as is recommended or required by the Ombudsman to be paid (as a result of the maladministration or other failure) or such lesser sum as the Council pays following the Ombudsmans report. Reference to “compensation” shall be construed accordingly and shall not require a decision, judgement or order to have been made by any Court, Tribunal or other appropriate body before such sum paid can be recovered from the Concession Holder in accordance with this Condition;
- 19.5 For the purposes of Condition 19.3 “the value of any other benefit” shall be such monetary value (if any) as in the Authorised Officer’s opinion equates to or is equal to that other benefit given by the Council, providing such a benefit is capable of having a monetary value ascribed to it. Where the Concession Holder disputes the value of that benefit, the task of assessing such value shall be given to an appropriate independent professional body. That body shall be selected by the Council having regard to the nature of the benefit given by the Council.

20 Not Used

21 Not used

22 Authorised Officers

- 22.1 The Council shall appoint an/a number of Authorised Officers to act in the name of the Council for the purposes of this Contract as detailed in Schedule 1;
- 22.2 The Authorised Officer(s) shall have power to issue written instructions to the Concession Holder on any matter relating to the provision of the Services and the Concession Holder shall comply therewith;
- 22.3 The Council shall give notice in writing to the Concession Holder of the establishment of further postholders as Authorised Officers (in addition to those specified in Schedule 1) or if any of the postholders specified in Schedule 1 cease to be Authorised Officers. Until such notice is given, the Concession Holder shall be entitled to treat as Authorised Officers only those postholders specified in Schedule 1 or last notified to the Concession Holder as being Authorised Officers.

23 Contract Manager

- 23.1 The Concession Holder shall ensure that at all times during the Contract Period a senior person with suitable sufficient and relevant experience and qualifications is appointed as the Contract Manager and is available to be contacted by any Authorised Officer at all times during usual office hours in each working day. The Contract Manager shall notify the Authorised Officer of an emergency telephone number for these purposes;
- 23.2 The Concession Holder shall within fourteen (14) days of the Commencement Date give written notice to an Authorised Officer of the identity of the person it proposes to appoint as the Contract Manager and of any person it proposes to authorise to act for any period as a deputy for the Contract Manager together with details of their qualifications and experience. The Concession Holder shall forthwith give written notice to an Authorised Officer of any subsequent proposed appointments or authorisations with similar details. Any person proposed to be appointed as Contract Manager or authorised to act as deputy for the Contract Manager must first be approved in writing by the Council, such approval not to be unreasonably withheld;
- 23.3 The Contract Manager or duly authorised deputy shall be the authorised representatives of the Concession Holder and as such are empowered on behalf of the Concession Holder for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the Contract Manager or deputy shall be deemed to have been given or made to the Concession Holder;
- 23.4 The Contract Manager or authorised deputy shall:
 - 23.4.1 consult with an Authorised Officer (and with such other of the Council's supervisory staff as may from time to time be specified by an Authorised Officer)

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as often as may reasonably be necessary to ensure the continuous and efficient provision of the Services in accordance with the Contract;

23.4.2 follow and comply with any instructions or directions given or issued by an Authorised Officer in connection with the performance of the Services; and

23.4.3 attend and provide information to any meetings relating to the Services when required by the Council, including but not limited to the Executive, Scrutiny Committee, Members and Officers of the Council (which may be outside of normal office hours).

23.5 The Contract Manager shall inform an Authorised Officer promptly and in writing of any acts or omissions on the part of the Council or the Concession Holder which prevent or hinder or may prevent or hinder the Concession Holder from meeting its contractual obligations.

24 Supervision of Personnel

24.1 The Concession Holder shall provide sufficient supervisory personnel to ensure that the Concession Holder's personnel engaged in the provision of the Services are at all times adequately supervised and properly perform their duties. Such supervisory personnel must be sufficiently skilled, trained, qualified, experienced and instructed with regard to the provision of the Services and the performance by the Concession Holder of its obligations under the Contract. Prior to the Commencement Date, the Concession Holder shall supply to the Council the names and addresses of such supervisory personnel and shall throughout the Contract Period keep the Council informed of any changes;

24.2 All the Concession Holder's personnel engaged in the provision of the Services shall be under the control and direction of the Concession Holder's own supervisory personnel.

25 Personnel

25.1 The Concession Holder shall engage in and about the provision of the Service only persons who are careful, skilled, honest and experienced in the work which they are to perform. The Concession Holder shall implement such schemes of training and instruction as are necessary to ensure that the Services are performed to the Contract Standard, and in particular, shall ensure that all personnel engaged in the provision of the Services are at all times properly and sufficiently trained, skilled and instructed with regard to:

25.1.1 the task or tasks that they have to perform;

25.1.2 all relevant provisions of the Contract;

25.1.3 all relevant rules, procedures, regulations, standards and requirements concerning or applying to the Contract.

25.2 The Concession Holder shall employ sufficient personnel to ensure that the Services are provided at all times and in all respects to the Contract Standard. Prior to the

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Commencement Date the Concession Holder shall supply the Council with the names of its personnel and shall throughout the Contract Period keep the Council informed of any changes;

- 25.3 The Concession Holder shall (and shall procure that its personnel shall) comply with all policies, codes and procedures adopted by the Concession Holder (in accordance with Condition 8 – Compliance with Law and Procedures) and all relevant rules, codes, policies, procedures and standards of the Council and in either case with all relevant statutes, statutory orders and regulations;
- 25.4 An Authorised Officer may, to the extent necessary to preserve the standards and reputation of the Council, instruct the Concession Holder to take appropriate remedial action or remove from the provision of the Services any person engaged in or about the provision of the Services by the Concession Holder (which for the avoidance of doubt shall include the Contract Manager or deputy). The Council shall not be liable for any resulting loss or damage suffered directly or indirectly by the Concession Holder;
- 25.5 The Concession Holder shall ensure that all personnel who are at any time at the Locations carry out their duties and conduct themselves lawfully, in an orderly manner and cause no unreasonable disruption or delay to the operation of those Locations or the work of any of the Council's own personnel;
- 25.6 Gratuities:
- 25.6.1 The Concession Holder shall not, and shall procure that its personnel shall not, solicit or accept any gratuity or other reward, collection or charge in respect of the Services, except as provided for by the Contract;

26 TUPE

- 26.1 The Concession Holder acknowledges that the Council has made no assurances about the effect of TUPE and that it formed its own view on whether TUPE applies before submitting its tender for the Services. The Concession Holder agrees that the Contract Price shall not be varied on the ground that TUPE does or does not apply, irrespective of the belief of the Council or the Concession Holder prior to the execution of the Contract;
- 26.2 Should the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) apply to the transfer of the Services, the Concession Holder shall accept the transfer of the contracts of employment of the Council's existing personnel and any other personnel engaged in providing the Services and shall comply with all other applicable provisions of the Regulations and with the requirements of Condition 26 - TUPE;
- 26.3 The Concession Holder shall perform and discharge all obligations and duties of the employer under the contracts of employment of all employees including those transferred to the Concession Holder by the operation of TUPE and shall keep the Council fully and effectively indemnified at all times from and against liabilities for any costs, losses, damages,

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expenses, interest or claims suffered or incurred, whether directly or indirectly, by reasons of a claim brought by an employee arising out of any act or omission of the Concession Holder after the Commencement Date, including, without limiting the generality of the foregoing, any claim for redundancy, pay in lieu of notice, damages for breach of contract or any other matter relating to an employee's employment or its termination. For the avoidance of doubt this indemnity shall apply to the following costs incurred by the Council:

- costs incurred pursuant to an indemnity provided by the Council to a New Concession Holder in respect of such liabilities, or
- costs incurred pursuant to an increase in the contract rates or prices as a result of the Council, for whatever reason, being unable or unwilling to provide a New Concession Holder with an indemnity in respect of such liabilities;

26.4 The Council shall be entitled, without the prior consent of the Concession Holder, to assign the benefit of the indemnity given to the Council by the Concession Holder pursuant to Condition 26.7 to a New Concession Holder insofar as that indemnity applies to liabilities for claims by the Concession Holder's Employees that have not been resolved by the date of termination or expiry of the Contract;

27 Not Used

28 TUPE Information and Retendering

28.1 Without prejudice to the provisions of Condition 13 – Documents and Information above, the Concession Holder shall, within seven (7) days of a written request by the Council:

- 28.1.1 give the Council full details of all the Concession Holder's Employees including, but not limited to:
- 28.1.1.1 name, age, length of service and current state of health,
 - 28.1.1.2 details of the terms and conditions of employment (including but not limited to full details of the remuneration of the Concession Holder's Employees in whatever form and detail the Council may require),
 - 28.1.1.3 benefits (including but not limited to any bonus, incentive, profit sharing scheme, employee share scheme and life, accident and health insurance),
 - 28.1.1.4 accrued pension entitlements,
 - 28.1.1.5 working arrangements,
 - 28.1.1.6 input hours and regular overtime,
 - 28.1.1.7 outstanding obligations to increase remuneration,
 - 28.1.1.8 recognition agreements,
 - 28.1.1.9 redundancy schemes (including all those persons temporarily absent from work for any reason, for example, maternity leave, sick leave or

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holiday),

28.1.1.10 all existing, anticipated or threatened claims and disputes (including but not limited to industrial injury claims or claims in the Employment Tribunal); and

28.1.2 any other information which may be required by the Council in connection with any tendering exercise whether relating to the provision of the Service or the future provision of the same or any similar service and whether such tendering exercise takes place before or after the expiry of the Contract Period;

28.1.3 give the Council copies of all personnel and employment records (including without limitation) National Insurance and PAYE records, employment contracts and statement of terms and conditions of employment and disciplinary and attendance records relating to the Concession Holder's Employees.

28.2 It is expressly acknowledged that the Council can pass such information on to the New Concession Holder or a prospective New Concession Holder;

28.3 Information provided pursuant to this Condition 28 shall be at no cost to the Council;

28.4 In the event of any uncertainty as to whether an employee of the Concession Holder is a Concession Holder's Employee for the purposes of this Schedule the Concession Holder shall provide the Council with such information as the Council may require to enable the uncertainty to be resolved;

28.5 During the Contract Period the Concession Holder shall provide the Council with a pack of information relating to its workforce, its pay and terms and conditions of employment (as may be required and specified by the Council) for the purpose of covering circumstances when the Concession Holder shall cease to perform the Contract ("the Data Pack"). The first Data Pack shall be provided no later than 6 months after the Commencement Date. The Data Pack shall be updated by the Concession Holder during the Contract Period at intervals of not longer than one year following the supply of the first or subsequent Data Packs;

28.6 If the Concession Holder fails to produce the requested information (whether in whole or in part or in a timely fashion) or carries out an Act of Frustration:

28.6.1 the Council may recover possession of such records, documents, details and Information requested and the Concession Holder licenses the Council or its appointed agents to enter for those purposes any premises of the Concession Holder or its permitted sub-contractors where any such records, documents and Information may be held;

28.6.2 the Concession Holder shall be liable to the Council for all costs and liabilities incurred by the Council as a result of such conduct including (but not limited to) any increase in the cost of subsequently performing the Contract (whether temporary or otherwise) and all costs or liabilities of any indemnity required by any New Concession Holder to be given by the Council;

- 28.7 The Concession Holder shall liaise and co-operate with the Council and any New Concession Holder to ensure a smooth and seamless transition of the Services.

29 Access and Location

29.1 Should the Council agree to grant to the Concession Holder rights of access to any Location, or to any other premises, the Concession Holder shall exercise such rights of access in accordance with the terms and conditions set out in the Contract and such other terms as the Council may from time to time notify to the Concession Holder. In particular, the Concession Holder shall:

- 29.1.1 not permit the Location to be used for any purpose other than for the performance of the Services without the prior written consent of the Council, which may be given on such terms as the Council may in its absolute discretion think fit;
- 29.1.2 ensure that the Location is left clean, tidy and properly secure after use;
- 29.1.3 ensure that no alteration or modification is made to the Location without the prior written consent of an Authorised Officer;
- 29.1.4 pay any rent or other charge or expense that is due in relation to the Location;
- 29.1.5 comply with all statutory requirements and reasonable instructions of an Authorised Officer governing the use and operation of the Location;
- 29.1.6 report forthwith to any Authorised Officer any accident occurring at the Location;
- 29.1.7 ensure that no Location is used or left in such a way as to vitiate or make voidable any insurance policy effected by the Council;
- 29.1.8 limit its use of gas, electricity, water and all other services at any Location to that reasonably required in respect of the proper performance by the Concession Holder of its obligations under this Contract;
- 29.1.9 hold access keys as required by the Council and be responsible for the safekeeping of any keys, passes and other means of access provided to the Concession Holder by the Council. The Concession Holder shall only permit such keys, passes and other means of access to be given to those of its personnel whose names and addresses have been supplied to the Council and only to the extent required for the purposes of providing the Services. In addition, the Concession Holder shall ensure that the Council is informed immediately of any loss of such keys, passes and other means of access and shall reimburse to the Council any cost of replacement and any reasonable security measures implemented as a result of such loss;

29.2 Nothing in the Contract is intended to create and nothing in the Contract shall be construed as creating any tenancy in respect of the Location or any rights in respect of the Location

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beyond those granted to a contractor to enter upon premises at certain times and on certain days to perform services.

30 Use of Premises

- 30.1 The Concession Holder has included within their Tender all costs associated with the provision of a Premises or occupation of Council Premises where applicable, including the asset rent;
- 30.2 The Concession Holder shall ensure that it has access to sufficient and suitable premises throughout the Contract Period to provide the Services to the Contract Standard;
- 30.3 The Concession Holder shall ensure that the Concession Holder's Premises are safe, secure and suitable in all respects for the provision of the Services and comply with all relevant Legislation. The Concession Holder shall afford the Council access upon reasonable notice to inspect the Concession Holder's Premises including the inspection of any security, fire protection and disabled access systems;
- 30.4 The Concession Holder shall ensure that the Concession Holder's Premises are at all times suitable for their intended purpose including the installation of sufficient equipment, layout and provisions for disabled people under the Disability Discrimination Act 1995 and any regulations enacted thereunder;
- 30.5 If the Concession Holder is to occupy Council Premises (or part thereof), the Council shall if required to by the Council enter into a Licence ("the Licence") to occupy the Premises;
- 30.6 The Concession Holder shall ensure that neither they nor their employees do anything at the Premises other than for the proper performance of the Services and as may be permitted by these Conditions and the provisions of the Licence;
- 30.7 The rent and all charges relating to the Concession Holder's use of the Premises, such as gas, electricity and business rates, shall be met by the Concession Holder in full.

31 Equipment

31.1 Council Equipment:

- 31.1.1 The Concession Holder shall throughout the Contract Period keep any relevant Council Equipment safe and free from loss or damage (save fair wear and tear) and shall forthwith report any loss, damage, failure or breakdown of the Council Equipment to an Authorised Officer;
- 31.1.2 Where any of the Council Equipment is damaged as a result of the negligence of the Concession Holder or its personnel, the Concession Holder shall be responsible for the cost of repair or replacement of that Council Equipment;

31.2 Concession Holder's Equipment:

- 31.2.1 The Concession Holder will throughout the Contract Period provide all the

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Concession Holder's Equipment necessary for the provision of the Services which shall be approved by the Council before use in the performance of the Services;

- 31.2.2 The Concession Holder shall only use Equipment of the type detailed in its Tender unless otherwise agreed by the Council;
- 31.2.3 The Concession Holder shall be responsible for all installations, removals, connections and disconnections as the case may be of the Concession Holder's Equipment . Before the end of the Contract Period, and if required by the Council, the Concession Holder shall reinstall and reconnect any Council Equipment so that it is in full working order; following the removal of units any damage to the premises must be 'made good' and the premises reinstated to the reasonable satisfaction of the Council.
- 31.2.4 The Concession Holder shall ensure that the Concession Holder's Equipment is safe and without risk to health and that it is used in a skilful and proper manner and by persons who are competent to use the same, and in particular, but without prejudice to the generality of the foregoing, that all necessary safety equipment is used and the correct procedures followed;
- 31.2.5 The Concession Holder has set out in the Tender the codes of practice and safe methods of operation for using the Concession Holder's Equipment. If, in the opinion of an Authorised Officer, such equipment is not used or maintained to the required standard or is potentially dangerous or staff or users of the Location, then a notice requiring the immediate withdrawal of that equipment from use may be issued, and the Concession Holder shall immediately withdraw that equipment from use. Any Concession Holder's Equipment withdrawn following receipt of a notice shall not be reinstated without the written approval of an Authorised Officer;
- 31.2.6 Should the Concession Holder fail to meet their obligations in respect of the safe maintenance and repair of the Concession Holder's Equipment then an Authorised Officer may give instructions for the repair or replacement of the equipment and any costs shall be met by the Concession Holder;

32 Assignment and Sub-contracting

- 32.1 The Concession Holder shall not assign, sub-contract charge or otherwise deal with all or any of its rights and obligations under the Contract without the previous written consent of the Council which consent (if given) shall not relieve the Concession Holder from any liability or obligations under the Contract. The Concession Holder shall be responsible for the acts, defaults or neglect or any sub-contractor or its agents or personnel in all respects as if they were the acts, defaults or neglect of the Concession Holder or its agents or personnel notwithstanding that the Council may require as a condition of giving any consent to sub-contract a direct warranty and undertaking from the sub-contractor concerning the provision

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of the Services and compliance with the Contract. The Concession Holder shall ensure that in entering into any sub-contract for the Services that the terms of such sub-contract are not contrary to any provisions of this Contract;

- 32.2 Without prejudice to the provisions of Condition 32.1 above, it shall be the responsibility of the Concession Holder to maintain full control over and adequate liaison with any sub-contractor in order to ensure compliance with the Contract Standard, and, in addition, full control and adequate liaison as between any sub-contractors. The Concession Holder shall submit to the Council not less than thirty (30) days before the Commencement Date a written summary of the system which the Concession Holder proposes to put in place to maintain such control and liaison.

33 Liability and Indemnity

- 33.1 The Concession Holder shall be liable for and shall fully indemnify the Council, its officers, employees, agents and other contractors against all liabilities, damages, costs, losses, claims, demands and proceedings, however arising, whether in contract, tort or otherwise, directly or indirectly, out of, or in the course of, or in connection with, the provision of or failure to provide the Services or the breach by the Concession Holder of any provisions of the Contract. The Concession Holder also indemnifies the Council against all claims, awards, proceedings, liabilities, costs and expenses (including without limitation legal costs on a solicitor and own client basis) arising in connection with any claim made by:

33.1.1 any trade union in respect of failure to consult in accordance with the TUPE Regulations;

33.1.2 any employee or former employee of the Council or employee of any other employer (whose employment transferred to the Concession Holder by reason of TUPE) because of any act or omission of the Concession Holder on or after the commencement of the Contract;

- 33.2 For the avoidance of doubt, the Concession Holder's liability to indemnify the Council pursuant to this Condition 33 on account of loss of or damage to any property of any nature whatsoever, includes a liability to reimburse the Council all costs and expenses reasonably incurred by the Council in the reinstatement or replacement of such property, whether or not such reinstatement or replacement results in an improvement to the property so lost or damaged;

- 33.3 The Concession Holder's liability and indemnity to the Council arising under this Condition 33 shall be without prejudice to any other right or remedy available to the Council;

- 33.4 Save as provided for by Condition 33.5 below, the Council shall not be liable to the Concession Holder whether in contract, tort or otherwise, for any loss, damage or injury however caused or arising out of, or in connection with, the provision by the Concession Holder of the Services or the access to or use or occupation of the Council's Premises or

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facilities by the Concession Holder or the Concession Holder's personnel;

- 33.5 Condition 33.4 shall not apply in relation to any deliberate or negligent act or omission of the Council or any of its employees and in particular any negligent act or omission giving rise to death or personal injury;
- 33.6 The Council shall not in any event be liable to the Concession Holder in contract, tort or otherwise for any indirect or consequential loss whatever and howsoever caused.

34 Insurance

- 34.1 Without prejudice to its liability to indemnify the Council under Condition 33 the Concession Holder shall throughout the Contract Period maintain such insurances as are necessary to cover any liability which may arise under the Contract, and in particular, to cover public and employers liability, professional indemnity and fidelity guarantee. Such insurance cover shall amount to:
- 34.1.1 at least £10,000,000 in respect of Public Liability (Third Party) cover in respect of any one occurrence; and
 - 34.1.2 at least £10,000,000 in respect of Employer's Liability cover in respect of any one occurrence;
- 34.2 The Concession Holder's insurance policies effecting such cover shall have the interest of the Council noted thereon or at the election of the Council such insurance shall be taken out in the joint names of the Concession Holder and the Council and in all respects at the Concession Holder's expense;
- 34.3 The Concession Holder shall, at the commencement of the Contract Period and thereafter upon request, produce to an Authorised Officer a copy of the policies effecting the insurances required under this Condition, together with documentary evidence that such insurances are properly maintained;
- 34.4 Should the Concession Holder default in insuring or in continuing to insure as provided in this Condition, the Council may itself procure such insurances and may charge the cost of such insurances together with an administration charge of ten (10) per cent of such cost to the Concession Holder either by way of deduction from amounts payable by the Council to the Concession Holder under the terms of the Contract or recovering the same as a debt due to the Council from the Concession Holder;
- 34.5 The Concession Holder shall procure that any sub-contractors of the Concession Holder maintain like insurance cover to that required by the Concession Holder under the Contract and such other insurance cover as may from time to time be reasonably required by the Council.

35 Contract Price

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- 35.1 The Contract Price shall (subject to the provisions of the Contract which provide for variation or review) be as stated in the Tender and shall be payable by the Concession Holder to the Council from the Commencement Date in accordance with the terms of this Contract;
- 35.2 The Contract Price shall include all costs of providing the Services and all costs, charges, expenses and outgoings incurred by the Concession Holder in performing its obligations under the Contract.

36 Payment

- 36.1 The Minimum Guaranteed Sum shall be paid quarterly in advance.
- 36.2 At the end of each quarter (or part of a quarter) the Concession Holder shall submit to the Authorised Officer a statement in a form and format approved by the Authorised Officer (the "Revenue Statement") that shows:
- 36.2.1 the revenues received by the Concession Holder in respect of the Services for the relevant quarter (or part of a quarter);
 - 36.2.2 the allowable cost deductions incurred by the Concession Holder in respect of the Services for the relevant quarter (or part of a quarter);
 - 36.2.3 the amount due to the Council in accordance with the provisions of the Pricing Schedule;
 - 36.2.4 the amount (if any) to be added or deducted in accordance with any of the Conditions of this Contract;
 - 36.2.5 the net amount due to the Council; and
 - 36.2.6 any other information required by the Authorised Officer;
- 36.3 The Authorised Officer shall within fourteen (14) days of receipt of the relevant Revenue Statement issue an invoice to the Concession Holder in respect of the relevant quarter that shows the net amount due to the Council and the amount (if any) to be added by way of Value Added Tax;
- 36.4 If the Authorised Officer considers that any Revenue Statement(s) is/are incorrect or contain an error, the Authorised Officer may at any time within six (6) years of the date of the relevant Revenue Statement(s) arrange for an audit and/or investigation of the relevant Revenue Statement(s) and may issue an invoice to the Concession Holder for any additional amount that may be payable by the Concession Holder and the amount (if any) to be added by way of Value Added Tax;
- 36.5 The Concession Holder shall pay such amount as may properly be due to the Council under the Contract within fourteen (14) days of the receipt by the Concession Holder of an invoice from the Council;
- 36.6 The Concession Holder will pay to the Council on late payment of any amounts due under this condition, interest at four (4) % above the base rate of the National Westminster Bank plc in force at that time from the day following the end of the specified payment period until

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payment is made.

37 Not Used

38 Not Used

39 Force Majeure

39.1 Neither party shall be responsible for failure to carry out any of its duties under this Contract to the extent to which the failure is caused by Force Majeure provided that where the affected party is the Concession Holder, it:

39.1.1 has taken all reasonable steps to prevent and avoid the Force Majeure,

39.1.2 carries out the Services to the best level reasonably achievable in the circumstances of the Force Majeure, and

39.1.3 takes all reasonable steps to overcome and mitigate the effects of the Force Majeure as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them;

39.2 The Concession Holder will notify the Council immediately on becoming aware of the Force Majeure, or any circumstances that may lead to it, giving details of the Force Majeure, the Services which are or will be affected, and a reasonable estimation of the period during which the Force Majeure will continue. Once the Force Majeure has ended the Concession Holder will give immediate written notice to the Council to this effect;

39.3 The payment to be made for the Services affected by Force Majeure will be reduced by a reasonable amount to be determined by the Council to reflect the extent or standard to which the affected Services are being provided. If a Force Majeure results in the suspension of all of the Services, the Council will not be liable to pay any part of the Contract Price.

40 Default and Termination

40.1 Without prejudice to any other provisions of this Contract, if:

40.1.1 as a result of any breach of the terms of the Contract by the Concession Holder that has not been remedied after 14 days the image or reputation of the Council has been or is likely to be (if such breach is repeated) adversely affected; or

40.1.2 there has been any other material breach of the Contract by the Concession Holder; or

40.1.3 the Concession Holder Abandons the Services; or

40.1.4 the Concession Holder suspends payment to or convenes or holds a meeting of creditors or commits an act of bankruptcy or (being a company) shall have a receiver appointed pursuant to the Insolvency Act 1986 or by the Court or any debenture holder or shall have an administration or administrative receiver

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appointed pursuant to the Insolvency Act 1986 or shall go into liquidation (other than for the purposes of amalgamation or reconstruction) or shall make any arrangements with its creditors or any arrangements for the benefit of such creditors or if distress or execution shall be levied or threatened upon any of its property or any judgement against it shall remain unsatisfied for more than fourteen (14) days; or

- 40.1.5 there shall be any change in control of the Concession Holder or (where the Concession Holder is a subsidiary company) its ultimate holding company; or
- 40.1.6 any of the warranties and representations referred to in Condition 2 shall prove to be materially untrue or incorrect; or
- 40.1.7 if a circumstance of Force Majeure which prevents the Concession Holder from providing part or all of the Services in any material respect continues for more than 60 days;

then the Council may (without prejudice to the deduction of any sums of money pursuant to the provisions of the Contract and all other rights and remedies available to it) do any one or more of the matters set out in Condition 40.2.

40.2 The matters referred to in Condition 40.1 are:

- 40.2.1 to suspend payment to the Concession Holder of any payments due under the Contract; or
- 40.2.2 to retain any amount due to the Concession Holder from the Council; or
- 40.2.3 to make such deduction from any payment to be made to the Concession Holder pursuant to this Contract as may reasonably reflect sums paid or sums which would otherwise be payable in respect of such of the Services to which the Concession Holder's breach relates; or
- 40.2.4 without determining the Contract or any part of the Contract, to provide or procure the provision of part of the Services until such time as the Contract Manager shall demonstrate to the reasonable satisfaction of an Authorised Officer that the Concession Holder will be able to resume performance of such part of the Services to the Contract Standard, and
 - 40.2.4.1 during such period, the Concession Holder's performance of such part of the Services and the Council's payment to the Concession Holder for such part of the Services shall be suspended; and
 - 40.2.4.2 for the purpose of this Condition the Council shall, prior to such suspension, serve a notice on the Concession Holder setting out those parts of the Services which the Council intends to provide or procure the provision of and the Council shall, prior to any such resumption,

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serve a notice on the Concession Holder that the Council requires the Concession Holder to resume the provision of part of the Services; or

40.2.5 without determining the whole of the Contract, to determine the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made as if such determination were a Variation made in accordance with Condition 47) and thereafter itself provide or procure the provision of such part of the Services; or

40.2.6 to determine the whole of the Contract.

40.3 The Council may charge the Concession Holder any costs reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Services by the Council or by a third party in the circumstances set out in this Condition 40, to the extent that such costs exceed the payment which would otherwise have been payable to the Concession Holder for such part of the Services;

40.4 If the Council enforces any of its rights under Condition 40.2 the Concession Holder shall, forthwith upon receipt of a request from the Council, deliver to the Council all equipment and other materials as the Council may reasonably require for the continued provision of the Services;

40.5 If the Concession Holder fails to perform any of the Services to the Contract Standard and such failure is capable of remedy, then the Concession Holder shall at its own cost and expense, remedy such failure (and any damage resulting from such failure) forthwith upon the same having come to its attention. For the avoidance of doubt a failure to perform shall include a failure to remedy as required by this Condition 40.5;

40.6 The Council may terminate this Agreement at any time by giving the Concession Holder three (3) months' written notice thereof;

40.7 The remedies of the Council under this Condition 40 may be exercised successively in respect of any one or more failures by the Concession Holder;

40.8 The rights of the Council under this Condition 40 are in addition and without prejudice to any other right the Council may have to claim the amount of any loss or damage suffered by the Council.

41 Consequences of Termination

41.1 At the end of the Contract Period or earlier termination, the Council shall have the right:

41.1.1 to offer employment of a contract for services with the Council or with any third party taking over all or part of the Services to any employee or contractor of the Concession Holder who has been involved in performing the Concession Holder's obligations under the Contract. The Concession Holder agrees that the acceptance of any such offer shall release such person from any breach of contract which such acceptance may otherwise involve,

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- 41.1.2 to require the Concession Holder to provide free of charge for three (3) months following the date of termination of the Contract such advice, assistance and co-operation as the Council may reasonably require to enable the Council to provide or procure the provision of the Services or part of them,
 - 41.1.3 to require the Concession Holder to use its best endeavours to assign to the Council or to any third party taking over all or part of the Services any contract to which the Concession Holder is a party and which relates to the Services or part of them;
 - 41.1.4 to require that all of the Concession Holder's equipment should be removed and any damage to the premises must be 'made good' and the premises reinstated to the reasonable satisfaction of the Council.
 - 41.1.5 to require the outgoing Concession Holder to make its best endeavours to offer all reasonable cooperation to any incoming operator in securing a successful transition and causing the minimum disruption to the operation of the service and associated income enjoyed by the Council.
- 41.2 At the end of the Contract Period the Concession Holder shall return to the Council all original and copy records, documents and Information relating to the Services in its possession or under its control or in the possession of under the control of the permitted sub-contractor;
- 41.3 Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Concession Holder and the Council accrued before such termination or expiration. Nothing in the Contract shall prejudice the right of either party to recover any amount outstanding at such termination or expiry.

42 Dispute Resolution

- 42.1 The Council and the Concession Holder shall use their best endeavours to resolve by agreement any disputes arising between them;
- 42.2 If any such dispute cannot be settled amicably through ordinary negotiations between an Authorised Officer and the Contract Manager within fourteen (14) days of the dispute commencing, the dispute shall be referred to the Council's Head of Highways at 160 Tooley Street, London SE1 2TZ and a senior Director of the Concession Holder who shall attempt to resolve the dispute. If the parties are unable to settle any dispute by this further process of negotiation within fourteen (14) days the parties will refer the matter for mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 42.3 If a dispute is referred to CEDR the parties shall co-operate fully with any mediator appointed and will bear their own costs and one half of the fees and expenses of the mediation (unless

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a different agreement is reached in the mediation).

- 42.4 Neither party may start legal proceedings until the mediation is complete, abandoned or fails to resolve the dispute.
- 42.5 In the event that this Contract is or is deemed to be a construction contract within the meaning of the Housing Grants Construction and Regeneration Act 1996, then if either party shall refer any dispute to adjudication, the adjudication shall be carried out pursuant to the Technology and Construction Solicitors' Association (TeCSA) Adjudication Rules.

43 Notices

- 43.1 Any notice required to be given to the Council under this Contract shall be in writing and may be served:
- 43.1.1 by delivering the notice by hand to the Council's Head of Highways at 160 Tooley Street, London SE1 2TZ in which case the notice shall be deemed to have been served at the time it is so delivered provided a receipt is obtained; or
 - 43.1.2 by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Council and marked clearly for the attention of the Head of Highways at the address shown above, in which case the notice shall be deemed to have been duly served when a signature acknowledging its receipt has been obtained;
- 43.2 Any notice required to be given to the Concession Holder under this Contract shall be in writing and may be served:
- 43.2.1 by delivering the notice by hand to the Concession Holder at the Concession Holder's last know place or abode or business or, if the Concession Holder is a company, at the registered office of the company in which case the notice shall be deemed to have been duly served at the time it is so delivered; or
 - 43.2.2 by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Concession Holder at the Concession Holder's last known place of abode or business or, if the Concession Holder is a company, at the registered office of the company in which case the notice shall be deemed to have been duly served the day following posting.

44 Whole Contract

- 44.1 The Contract constitutes the whole agreement and understanding of the parties as to the subject matter of the Contract and there are no prior or contemporaneous agreements between the parties with respect to it.

45 Agency

- 45.1 The Concession Holder shall not be or be deemed to be an agent of the Council and the Concession Holder shall not hold itself out as having authority or power to bind the Council in any way.

46 Waiver

- 46.1 No waiver by either party of any default by the other in the performance of any of the provisions of the Contract shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

47 Variation of the Services and Amendments

- 47.1 The Council may, upon giving reasonable written notice to the Concession Holder, increase, reduce, add to, omit or change the Services or add or remove a Location for any reason. Any such variation of the Services is called a "Variation" and (subject to the following provision of this Condition 47) the Concession Holder shall be bound by any Variation with effect from the date specified by the Council as the date upon which it is to have effect. No variation shall be valid unless it is in writing and signed by an Authorised Officer;
- 47.2 In the event of a Variation, the Contract Price may also be varied. The amount of any such variation shall be calculated by the Council and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the prevailing circumstances. The Concession Holder shall provide the Council with such information and documents as the Council may reasonably require to enable it to reach its calculation;
- 47.3 Without prejudice to Condition 47.1, no amendment to the Contract which is not a Variation shall be binding unless it is in writing and signed by an Authorised Officer on behalf of the Council and by the duly authorised representative of the Concession Holder and expressed to be for the purposes of such amendment.

48 Severance

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

49 Inconsistency

- 49.1 In the case of any inconsistency between the Specification and the Conditions, the Conditions shall prevail.

50 Applicable Law

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

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51 Third Party Rights Act

- 51.1 Subject to condition 50.2, it is agreed between the parties that this Contract shall not and the parties to this Contract do not intend to confer any benefit upon any third party which is enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999;
- 51.2 Any obligation under this Contract on the Concession Holder to provide TUPE information to the Council, or not to perform any Act of Frustration or other Prohibited Acts, shall be an obligation which is also, for the purposes of the Contracts (Rights of Third Parties) Act 1999, an obligation owed to a New Concession Holder (and consequently enforceable and actionable by them) where the New Concession Holder suffers loss and damage as a consequence of breach of the relevant obligation by the Concession Holder.

52 Continuation of Obligations

- 52.1 Termination of this Contract will not affect either of the party's accrued rights or liabilities or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination, including in particular Condition 8 - Compliance with Law and Procedure, Condition 9 - Data Protection, Condition 13 – Documents and Information, Condition 15 – Confidentiality, Condition 26 - TUPE, Condition 28 – TUPE Information, Condition 33 - Liability and Indemnity, Condition 34 - Insurance, Condition 41 - Consequences of Termination. Clause 52 – Continuation of Obligations.

53 Whistleblowing

- 53.1 The Concession Holder confirms that the Authorised Officer is authorised as a person to whom the Concession Holder's staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of its staff making a protected disclosure (as defined by the said Act) shall not be subject to any detriment. The Concession Holder further declares that any provision in any agreement purporting to preclude a member of its staff from making a protected disclosure is void.

**Schedule 1
Authorised Officers**

Name/Job Title	Address	Phone number(s)	email address
Dale Foden Head Of Highways	Southwark Council 160 Tooley St, London, SE1 2TZ	020 7525 2045	Dale.Foden@southwark.gov.uk
Graeme Lake Asset & Technical Manager	Southwark Council 160 Tooley St, London, SE1 2TZ	02007 525 1271 07514 625320	Graeme.Lake@southwark.gov.uk

Schedule 2
Specification

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Schedule 3
Pricing Schedule