

WANDSWORTH BOROUGH COUNCIL

INVITATION TO TENDER IN RESPECT OF A CONTRACT FOR THE PROVISION OF TREE MAINTENANCE SERVICES (“LOT 2”)

VOLUME 3B OF 7

FORM OF CONTRACT AND CONDITIONS FOR LOT 2

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CHAPTER FOUR

DRAFT FORM OF CONTRACT

LOT 2: CONTRACT FOR THE PROVISION OF TREE MAINTENANCE SERVICES

THIS CONTRACT is made the [] day of [], 20[]

BETWEEN

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH of
The Town Hall, Wandsworth High Street, London SW18 2PU (“**the Council**”) of the one part and

[] a company registered in England and Wales
(**Company Number** []) with its registered office located at []
[(“**the Contractor**”) of the other part.

WHEREAS

- (1) the Council wishes to have performed the Services set out in the Conditions and the Schedules to this Contract; and
- (2) the Contractor is willing to perform such Services in accordance with the provisions of and subject to the terms of the said Conditions and Schedules.

NOW IT IS AGREED between the Council and the Contractor as follows:

- A. This Contract (consisting of the Form of Tender (as attached as Appendix 1) and the Conditions and the Schedules (as attached as Appendix 2) inclusive) constitutes the sole contract or agreement between the Council and the Contractor for the performance by the Contractor of the Services set out in the Conditions and the Schedules.
- B. The Contractor shall perform the Services set out in the Conditions and the Schedules in accordance with the Conditions and to the satisfaction of the Council for the Contract Period commencing on the Commencement Date and terminating on the Termination Date.
- C. So long as the Contractor shall continue to perform the Services set out in the Conditions and the Schedules in accordance with the Conditions and to the satisfaction of the Council, the Council shall make to the Contractor the payments provided for by this Contract.

IN WITNESS whereof the parties have executed this Contract as a **DEED** the day and year first before written.

**THE COMMON SEAL of THE MAYOR AND)
BURGESSES OF THE LONDON BOROUGH)
OF WANDSWORTH was affixed to this DEED)
BY ORDER)**

Authorised Officer:

Seal Register No:

**THE COMMON SEAL of [)
])
was hereunto affixed in the presence of:)**

Director:

Director/Secretary:

[Alternatively, in the absence of a Common Seal of the Contractor:]

**SIGNED as a DEED and DELIVERED)
by [])
for and on behalf of)
[])
("the Contractor") in the presence of:)**

Full name of Witness (print)

Full address of Witness (print)

.....

Occupation of Witness (print).....

Signature of Witness.....

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CHAPTER 5 THE CONDITIONS

1. DEFINITIONS

In this Contract, save where the context otherwise requires the following expressions shall have the meanings hereby assigned to them:

- 1.1 “**Appendix**” refers to the Appendices to this Contract and “Appendix” means any one or other of the Appendices.
- 1.2 “**Arboricultural Manager**” means the person appointed by the Contractor in accordance with Condition 14.
- 1.3 “**Authorised Officer**” means the Council’s **Director of Environment and Community Services** or such other officer as the Council may appoint hereafter and such representatives as he/she may nominate in writing for general or specific purposes from time to time.
- 1.4 “**Best Value Duty**” means the duty imposed on the Council by Section 3 of the Local Government Act 1999.
- 1.5 “**Business Continuity Plan**” means a business continuity plan maintained in accordance with the Civil Contingencies Act 2004.
- 1.6 “**Commencement Date**” means the 24th day of February, 2013, which is to be the commencement date for the performance of the Services by the Contractor.
- 1.7 “**Conditions**” means these Conditions and any modification thereof duly made in accordance with their provisions.
- 1.8 “**Contract**” means this contract concluded between the Council and the Contractor including the Conditions, the Schedules and all other documents that are incorporated or referred to herein.
- 1.9 “**Contract Documents**” means the Contract and any other documents forming part of this Contract.
- 1.10 “**Contract Period**” means the period of eight years commencing on the Commencement Date and terminating on the Termination Date.
- 1.11 “**Contract Standard**” means in relation to the performance of any part of the Services, a standard of performance:
 - (a) in accordance with best industry practices and the highest workmanlike standards;
 - (b) in accordance with the provisions of the Conditions, the Specification and the Schedules including the Method Statement;
 - (c) in compliance with all relevant Acts of Parliament, statutory regulations or orders, codes of practice, performance ratings and quality standards in operation from time to time including but without prejudice to the generality the general duty to secure

continuous improvement having regard to a combination of economy efficiency and effectiveness pursuant to Section 3 of the Local Government Act 1999;

- (d) in accordance with the standing orders and scheme of delegations to Chief Officers of the Council;
- (e) in co-operation with the Council and its other relevant contractors; and
- (f) to the reasonable satisfaction of the Council.

1.12 **“Contractor”** means the person, persons or company described in the Form of Contract as the Contractor.

1.13 **“Council”** means the Council of the London Borough of Wandsworth, any successor authority and any body to which all or part of the functions of the Council of the London Borough of Wandsworth may lawfully be transferred.

1.14 **“Council Data”** means:

- (a) the information, data, text, diagrams, images or sounds (together with any database made up of any of these) or any other materials (in any medium) which are embodied in any electronic, magnetic, optical, tangible or portable media, and which are:
 - (i) supplied or in respect of which access is granted to the Contractor by or on behalf of the Council; or
 - (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract;
- (b) any Personal Data for which the Council is the Data Controller, as defined in the Data Protection Act 1998; and
- (b) any other data, information or materials (in any medium) which come into the possession of the Contractor in connection with or as a result of the provision of the Services including without limitation any data, information or materials held or stored in the Contractor’s computer systems.

1.15 **“Crown”** means the government of the United Kingdom (including Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, and government departments and particular bodies, persons and government agencies.

1.16 **“Detailed Rates”** means the detailed rates (subject to the Services having being provided) payable by the Council to the Contractor as set out in Schedule 2 and labelled as “Unit of Measure” as calculated in accordance with the provisions of the Contract.

1.17 **“Emergency Services”** means the additional services provided by the Contractor in accordance with the Specification in response to an Order issued by the Council including for the avoidance of doubt the minor ad hoc works and emergency works set out at paragraphs 3.3 and 3.4 in the Specification.

1.18 **“Emergency Services Annual Sum”** means the annual sum payable by the Council to the Contractor for the provision of a facility to enable the provision of the Emergency Services.

- 1.19 **“Employees”** means all persons engaged by the Contractor in the provision of the Services including personnel, staff and employees of the Contractor and shall include the Contractor’s agents and authorised sub-contractors and **“Employee”** means any one of the Employees.
- 1.20 **“Expert”** means an expert appointed pursuant to Condition 40.
- 1.21 **“HSWA”** means the Health and Safety at Work, etc Act 1974 and shall include any Codes of Guidance issued by the Council and supplied to the Contractor either before or during this Contract and any Codes of Guidance prepared by the Contractor.
- 1.22 **“Index”** means the Index of Retail Prices for “All Items (excluding mortgage interest)” (however such index might be termed) issued by the Department of Statistics or any other government department upon which duties in connection with the compilation and maintenance of such index shall have devolved or in the absence of any such Index such other Index as the Authorised Officer may reasonably specify.
- 1.23 **“Management Information”** means the information that the Contractor shall provide to the Council as applicable with all or any of the following information from time to time during the Contract Period:
- Invoice Date
 - Contract Date
 - Number of Orders covered by the Management Information
 - VAT Rate
 - Monthly Invoice amount

The above list is not exhaustive and the Council may from time to time change the items in the list provided that it has given the Contractor notice of such changes in accordance with Clause 60.

- 1.24 **“Method Statements”** means the statements annexed to this Contract at Schedule 3 detailing the Contractor’s proposals for the performance of the Services. In the event of any inconsistency between the Method Statements and the Conditions and other Schedules then the Conditions and other Schedules shall prevail.
- 1.25 **“Office Day”** means any day of the week from Monday to Friday inclusive but excluding all statutory public holidays and such other days, if any, as the Authorised Officer may notify to the Contractor in writing as days during which Council offices are closed to the public.
- 1.26 **“Order”** means an instruction issued from time to time by the Authorised Officer to the Contractor specifying the Services to be carried out and bearing a unique reference number and the Contract’s purchase order number in accordance with the terms of this Contract. For the avoidance of doubt, an Order may cover a small discreet area or a combination of various areas or services.
- 1.27 **“Plant”** applies to all fixed and movable items of plant, vehicles, equipment, machinery, tools and containers which the Contractor employs to deliver the Services.
- 1.28 **“Programme of Works”** means the Contractor’s programme of works specified in Schedule 3 detailing the Contractor’s proposals for the performance of the Services. In the event of any inconsistency between the Programme of Works and the Conditions and other Schedules then the Conditions and other Schedules shall prevail.

- 1.29 **“Prohibited Act”** means:
- (a) Offering, giving, or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward:
 - (i) For doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown; or
 - (ii) For showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown:
 - (b) Entering into this Contract or any other contract with the Crown where a commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council:
 - (c) Committing any offence:
 - (i) Under the Bribery Act 2010;
 - (ii) Under legislation creating offence in respect of fraudulent acts; or
 - (iii) At common law in respect of fraudulent acts in relation to this agreement or any other contract with the Crown: or
 - (d) Defrauding or attempting to defraud or conspiring to defraud the Crown.
- 1.30 **“Schedule”** refers to the Schedules to this Contract and “Schedule” means any one or other of the Schedules.
- 1.31 **“Services”** means the Services set out in the Specification and any modifications thereof under Condition 10.
- 1.32 **“Specification”** means all the documents forming Schedule 1 and any modifications to those documents under Condition 10.
- 1.33 **“SVGA 2006”** means the Safeguarding Vulnerable Groups Act 2006.
- 1.34 **“Tender”** means the Contractor’s tender to perform the Services accepted by the Council.
- 1.35 **“Tender Documents”** means the Contract Documents and any other documents forming part of the Tender including, without limitation, the following Chapters: the Preamble and General Information, the Instructions for Tendering, the Form of Tender, the Certificate that the Tender is Bona Fide and the Performance Bond/Parent Company Guarantee
- 1.36 **“Termination Date”** means the 23rd day of February, 2022 subject to any extension which may be effected in accordance with Condition 7.2.
- 1.37 **“Time”** shall be construed during the period of summer time to be British Summer Time or otherwise to be Greenwich Mean Time or as may be required or stipulated by statute.
- 1.38 **“VAT”** means Value Added Tax.
- 1.39 **“Working Day”** means any day of the week from Monday to Sunday inclusive, but excluding the 25th December, whether or not that day is a public holiday all Public Holidays and such

other days if any as the Authorised Officer may notify to the Contractor in writing as days during which Council offices are closed to the public.

- 1.40 **“Working Week”** shall be the period from the commencement of work by the Contractor on any Monday morning during the Contract Period to the completion of work on the subsequent Monday evening.
- 1.41 **“WRWA”** means the Western Riverside Waste Authority or any successor as the statutory waste disposal authority.
- 1.42 **“Year”** means a period of twelve consecutive calendar months commencing on the Commencement Date falling within the Contract Period.
- 1.43 Reference to personnel and Employees shall be deemed to include the Contractor’s partners, directors and employees and also the Contractor’s agents and sub-contractors and their personnel and employees, unless the context otherwise requires.
- 1.44 Reference to “including” shall be construed so as not to limit the generality of any words or expressions in connection with which it is used.

2. SUFFICIENCY OF INFORMATION

- 2.1 The Council shall exercise reasonable care and skill with respect to its preparation of information supplied to the Contractor. The Contractor shall take all reasonable steps necessary to satisfy itself by its own investigations at its own expense with regard to the accuracy of such information and shall be deemed to have done so.
- 2.2 The Contractor shall obtain for itself all information necessary to enable it to ascertain and assess all risks, contingencies and other circumstances that might reasonably influence or affect the Tender, and to have made full allowance for any changes that may occur between the date of the Tender and the Commencement Date.
- 2.3 Except as provided in Condition 10 no additional payment will be made to the Contractor by reason of any inaccuracy or change in the information provided whether occurring before or after the date of the Tender.

3. DOCUMENTS MUTUALLY EXPLANATORY

- 3.1 Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be resolved by the Authorised Officer who shall thereupon issue to the Contractor appropriate instructions in writing and the Contractor shall carry out and be bound by such instructions.
- 3.2 In the event of any inconsistency between the Conditions and any provision in any of the other Contract Documents, the Conditions shall prevail.

4. VARIATION OF CONDITIONS

Without prejudice to the rights and powers of the Authorised Officer under this Contract and notwithstanding any other of these Conditions, no deletion from, addition to or variation of the Conditions shall be valid or of any effect unless agreed in writing and signed on behalf of the

Council by the Authorised Officer (or by such other officer as the Authorised Officer may in writing appoint) and on behalf of the Contractor by a duly authorised representative of the Contractor.

5. COPYRIGHT

- 5.1 Copyright in this Contract shall vest in the Council but the Contractor may obtain or make at its own expense any further copies required for use by the Contractor in the performance of the Services.
- 5.2 Copyright in any documentation, articles or any written works produced by the Contractor in, or in connection with, the performance of the Services shall vest in the Council.
- 5.3 Except as permitted under current legislation, no part of this work may be photocopied, stored in a retrieval system, published, performed in public, adapted, broadcast, transmitted, recorded or reproduced in any form or by any means, without the prior permission of the Council, save as permitted under Condition 5.1.

6. THE AUTHORISED OFFICER

- 6.1 Prior to the Commencement Date the Council shall give notice to the Contractor of the name and designation of the Authorised Officer and shall forthwith give notice to the Contractor of any replacement of the Authorised Officer from time to time during the Contract Period or if any person ceases to be the Authorised Officer.
- 6.2 From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods. Immediately any such appointment is made, the Authorised Officer shall give written notice thereof to the Contractor.
- 6.3 The functions, rights and powers conferred by this Contract upon the Council shall be exercised by the Authorised Officer. The Contractor shall in no circumstances question the existence or extent of the authority of any person notified to the Contractor (whether orally or in writing) to be a replacement Authorised Officer, a deputy, assistant, representative or agent of the Authorised Officer.

7. CONTRACT PERIOD

- 7.1 This Contract shall subsist for the Contract Period subject to Condition 7.2 and subject to earlier termination in whole or in part in accordance with the terms of the Contract.
- 7.2 Subject to the mutual agreement of both parties prior to the Termination Date, the Contract Period may be extended for any period or periods up to a maximum of further four years.
- 7.3 The Contractor shall have executed the Contract as a Deed prior to the Commencement Date and should the Contractor fail to do so within 14 days of the Commencement Date then the Council shall be entitled to terminate the Contract in accordance with the provisions of Condition 35.

NON EXCLUSIVITY

- 7.4 For the avoidance of doubt, this Contract shall not be exclusive. The Council shall be entitled at any time during the Contract Period to carry out any part or parts of the Services, or services of a similar nature, itself, or to instruct or procure a third party to do so.

8. PERFORMANCE OF SERVICES

- 8.1 The Council shall instruct the Contractor to carry out the Services by issuing an Order to the Contractor which sets out the services that the Council wishes to be performed as set out in that Order. Each Order will be assigned its own unique reference number and the Contractor will carry out the Services in the manner as set out at 8.2. In addition and throughout the Contract Period the Contractor shall operate an Emergency Services provision. From time to time the Council may instruct the Contractor to carry out Emergency Services by issuing an Order to provide the Emergency Services as set out in the Order. The Council gives no guarantee as to the number, nature or volume of the Emergency Services and reserves the right to appoint alternative or additional contractors to carry out the Emergency Services or to provide the Emergency Services itself.
- 8.2 The Contractor shall perform the Services (and any modifications thereof authorised under Condition 10) in a proper, skilful and workmanlike manner to the Contract Standard in accordance with the Specification, Work Programme, Schedules and Method Statement shall at all times carry out the written instructions issued by the Authorised Officer in connection with this Contract. The Contractor shall have a policy of continuous improvement in relation to the performance of the Services and shall be able to show at any time during the Contract Period evidence of the practices designed to achieve such improvement.
- 8.3 Should the Contractor require any further instruction or information for, or in connection with, the performance of the Services, the Contractor shall make a written application to the Authorised Officer in which the requirement is stated in adequate detail. Such application shall be made on a date which, having regard to the date upon which the Contractor reasonably needs the instruction or information for or in connection with the performance of the Services, is neither too far away from, nor too close to, that date having regard to all the circumstances including the time likely to be required by the Authorised Officer to respond to the application.
- 8.4 The Contractor shall, before commencing performance of the Services, submit to the Authorised Officer for approval, written details of clear procedures for providing the Services including, without limitation, a Business Continuity Plan detailing procedures for providing the Services in the event of an emergency. The Contractor shall throughout the Contract Period:
- (a) maintain a Business Continuity Plan which has been approved by the Authorised Officer from time to time; the Contractor shall test its Business Continuity Plan on a regular basis (and in any event not less than once every 12 months) and shall send to the Council a written report summarising the results of each test and shall promptly implement any actions or remedial measures which the Council reasonably considers to be necessary as a result of those tests. The Council may require the Contractor to conduct additional tests of its Business Continuity Plan where the Council considers it necessary, including without limitation where there has been any change to the Services or any underlying business processes, or on the occurrence of any event that

may increase the likelihood of the need to implement the Business Continuity Plan. If the Council requires the Contractor to perform an additional test, it shall give the Contractor written notice and the Contractor shall conduct the test in accordance with the Council's requirements. The Council shall bear the Contractor's costs of any such additional test unless the Business Continuity Plan fails the additional test in which case the Contractor shall bear the costs of the failed test;

- (b) at the Council's request, participate in test(s) of the Council's Business Continuity Plan having first been given at least one month's written notice;
- (c) maintain all documentation and files in a professional manner;
- (d) submit to the Authorised Officer regular written progress and monitoring reports and such statistical information as the Authorised Officer may require from time to time; and
- (e) comply fully with all procedures approved by the Authorised Officer for the performance of the Services, which procedures may be varied only with the prior written approval of the Authorised Officer, such approval not to be unreasonably withheld.

8.5 Without prejudice to each and every remedy of the Council in the event of a failure of the Contractor to perform any of its obligations in accordance with the terms of this Contract, the Contractor shall at the Commencement Date initiate, and throughout the Contract Period maintain systems designed to ensure that the Services are carried out to the Contract Standard. Such systems shall be operated by the Arboricultural Manager for and on behalf of the Contractor and shall not be unreasonably withheld, before the Contractor commences to provide the Services.

8.6 The Contractor shall ensure that, on the occasions when this may be required, appropriate staff members attend, inform and advise meetings, as required by the Authorised Officer. Such meetings will usually take place between 9.00 am and 5.00 pm on Working Days and, unless otherwise agreed by the Authorised Officer, all such meetings shall take place on Council premises. The estimated frequency of such meetings is set out in the Specification. The Council shall be under no obligation to provide parking facilities for the Contractor's vehicles at the Town Hall or any other venue at which meetings may be held.

8.7 The Contractor shall, as soon as reasonably practicable, provide the Authorised Officer with any information relating to the performance of the Services which the Authorised Officer may reasonably request.

8.8 The Contractor shall throughout the Contract Period comply with all relevant workmanlike requirements including in particular statute and common law, statutory instruments, judicial decisions and European Community directives. The Contractor shall forthwith inform the Authorised Officer if these are likely to give rise to any substantial opportunities or benefit to the Council or any substantial difficulties.

8.9 The Contractor shall throughout the Contract Period maintain a communications system acceptable to the Authorised Officer.

- 8.10 Unless otherwise instructed by the Authorised Officer the Contractor shall ensure the delivery of all correspondence and documents to the Authorised Officer either by hand, facsimile transmission, electronic mail, the Document Exchange system or by First Class Post.
- 8.11 The times specified in the Contract and any variation in those times or any other times reasonably laid down by the Authorised Officer in respect of the Contractor's obligations shall be of the essence of the Contract and any failure by the Contractor to adhere to such times shall (notwithstanding anything elsewhere contained in the Contract) be a breach of this Contract.
- 8.12 In the event of the Contractor being unable to perform the Services or any part thereof, the Contractor shall immediately inform the Authorised Officer giving details of the circumstances, reasons and likely duration. Nothing in this Condition 8.12 shall in any way alter, modify, relieve or in any other way vary the Contractor's obligation to provide the Services or the Council's powers under other Conditions.
- 8.13 Instructions from the Authorised Officer which are posted to the Contractor shall be sent by First Class Post or by means of the Document Exchange system and shall be deemed to have been received by the Contractor on the following Working Day.
- 8.14 The Contractor shall at all times during the provision of the Services allow the Authorised Officer and such persons as may from time to time be nominated by the Authorised Officer access upon reasonable notice (except where it is deemed reasonably appropriate by the Authorised Officer to gain immediate access):
- (a) to all sites or locations of the Contractor for the purpose of inspecting work being performed pursuant to the provision of the Services;
 - (b) to all sites or locations of the Contractor for the purpose of inspecting records and documents in the possession, custody or control of the Contractor in connection with the provision of the Services;
 - (c) to all Plant, materials, stores and spare parts in order to ensure that such items comply with manufacturers' specifications;
 - (d) to all Plant, materials, stores and spare parts (whether such items are provided by the Council, the Contractor or otherwise) used or proposed to be used in connection with the performance of the Services for the purpose of ensuring that such Plant, machinery, tools, equipment, materials, stores and spare parts meet the requirements of the Specification and all relevant statutory requirements;
 - (e) to any Employee of the Contractor for the purposes of interviewing such persons in connection with the provision of the Services;
 - (f) technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Services, and
 - (g) to attend any Business Continuity Plan test undertaken by the Contractor.
- 8.15 If during the Contract Period the Authorised Officer and/or the Contractor (subject to the prior written consent of the Authorised Officer) modifies the methods employed by the Contractor to carry out the Services such that in the opinion of the Authorised Officer savings are made by the Contractor in the cost of providing the Services then the amount of such savings as shall be

notified by the Contractor to the Authorised Officer and approved by the Authorised Officer shall be divided equally between the Council and the Contractor. In the event of a dispute, this matter shall be determined by the Expert in accordance with Condition 40.

9. PERFORMANCE REVIEW AND BEST VALUE

- 9.1 The Contractor shall ensure that the Arboricultural Manager is available to meet the Authorised Officer, if so required, generally once a month during the Contract Period, for a sufficient amount of time as is reasonably decided by the Authorised Officer (at no additional cost) to enable the Council to monitor and review the Contractor's performance under this Contract. Additional meetings (also at no additional cost) may reasonably be required by the Authorised Officer including without limitation if, in the Authorised Officer's opinion, the Contract is not running satisfactorily. The Arboricultural Manager shall bring to these meetings such files and reports as may be requested by the Authorised Officer together with such management information as the Contractor is obliged to retain for the information of the Council under this Contract.
- 9.2 The Authorised Officer may introduce random sampling to determine the performance of the Services. The Authorised Officer reserves the right to employ his own representatives or agents to undertake such random sampling, and the Contractor shall afford all reasonable access and co-operation for the Authorised Officer, his representatives or agents in this respect.
- 9.3 The Contractor acknowledges that the Council shall prepare Business Continuity Plans at the Council's own expense and agrees that in so doing the Council may take into account and utilise any reports, information, files, data minutes, electronic or other forms of records compiled, supplied or obtained in connection with the performance of the Services.
- 9.4 The Authorised Officer may each year submit to the Contractor completed questionnaires relating to the Contractor's performance under this Contract and the responses contained in the completed questionnaires shall be retained by the Contractor for management information purposes so as to enable improvements to be made in service delivery and for use in performance review meetings as referred to in Condition 9.1.
- 9.5 In the event of the Authorised Officer requesting information from the Contractor in connection with any Council report, including without limitation the Business Continuity Plans, the Authorised Officer shall notify the Contractor of the dates by which it is required. Provided such notice is reasonable the Contractor shall provide the information requested by the dates stipulated.
- 9.6 The Contractor acknowledges that (a) the Council is subject to the Best Value Duty; and (b) the relevant provisions of this Condition 9, Condition 19 (Premises) and 24 (Records) shall assist the Council in discharging its Best Value Duty in relation to the Contractor's performance of the Services.
- 9.7 To the full extent of its obligations under this Contract, the Contractor shall undertake or refrain from undertaking such actions as the Council may reasonably request to enable the Council to comply with Part I of the Local Government Act 1999, including but not limited to the making of arrangements to secure continuous improvements in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

9.8 The Contractor shall comply with any reasonable requests made by the Authorised Officer for improvements in methods of service delivery.

10. MODIFICATIONS

10.1 The Authorised Officer shall be entitled to issue to the Contractor instructions in writing in relation to all or any of the following:

- (a) to omit any part of the Services or to cease to provide any part of the Services in such sites or locations during such times and for such period or periods as the Authorised Officer may determine which period or periods may be either of a permanent or temporary nature;
- (b) to provide the Services or any part thereof in such manner as the Authorised Officer may reasonably require, provided that a requirement to provide the Services to the Contract Standard shall not be a modification;
- (c) to provide such services additional to the Services including performance at additional or substituted sites or locations as the Authorised Officer may reasonably require, provided that such additional services shall be the same as or similar to the Services;
- (d) to perform any such additional works as shall in the opinion of the Authorised Officer be reasonably conducive or otherwise facilitate the performance of the Services. No such additional work shall be undertaken by the Contractor without the prior written approval of the Authorised Officer;
- (e) to comply with any obligations imposed on the Council by future legislation regulations directives or orders of similar effect;
- (f) to vary permanently the Services or any part thereof to be provided at any site or location as reasonably required by the Authorised Officer.

10.2 For the purpose of Condition 11 the valuation of modifications made pursuant to this Condition 10 shall be ascertained by the Authorised Officer in accordance with the following provisions:

- (a) Where part of the Services is omitted from, or ceases to be provided or is varied under the Contract, the rates and prices contained in the Detailed Rates at Parts A and B of Schedule 2 shall (where reasonable) determine the valuation of the part of the Services omitted, varied or no longer provided;
- (b) where the modification is of a similar character to and is executed under similar conditions to the Services, the rates and prices for the work contained in the Detailed Rates at Parts A and B of Schedule 2 shall (where reasonable) shall determine the valuation;
- (c) where the modification is not of a similar character to or is not executed under similar conditions to the Services, or where it would not be reasonable to determine the valuation in accordance with Conditions 10.2(a) or 10.2(b), the valuation shall be made at fair rates and prices having due regard where applicable to the rates and prices contained in the Detailed Rates at Parts A and B of Schedule 2; and

- (d) where the modification relates to an omission under Condition 10.1(a), the valuation shall not include, and the Council shall not be liable to the Contractor in respect of any loss or reduced contribution to overheads or profit, whether in respect of this Contract or any lost opportunity to earn overhead contribution or profit elsewhere.
- 10.3 This Condition 10 is subject to and without prejudice to any provisions for variations in the Services and the valuation and pricing of such variations set out in the Specification. Where such provisions apply, they shall prevail over this Condition 10 insofar as they are inconsistent with it.
- 10.4 If during the Contract Period the Authorised Officer and/or the Contractor (subject to the prior written consent of the Authorised Officer) modifies the methods employed by the Contractor to carry out the Services such that in the opinion of the Authorised Officer savings are made by the Contractor in the cost of providing the Services then the amount of such savings as shall be notified by the Authorised Officer to the Contractor shall be divided equally between the Council and the Contractor.

11. PAYMENTS

- 11.1 Within ten Office Days of the end of each calendar month, the Contractor shall submit an invoice to the Council in respect of the provision of the Emergency Services facility valued in accordance with one-twelfth of the Emergency Services Annual Sum. Within 20 Office Days of receipt of the invoice the Council shall pay the amount due to the Contractor.
- 11.2 Within 10 Office Days of completion of each Order the Contractor shall submit to the Authorised Officer an account and a supporting statement in such form as shall be approved from time to time by the Authorised Officer in respect of that package of work or Order valued in accordance with:
 - 11.2.1 The Detailed Rates in respect of the Services; and
 - 11.2.2 The Detailed Rates in respect of the Emergency Services, if appropriate.
- 11.3 Each account referred to in 11.2 shall include all relevant references and work numbers for the relevant Order.
- 11.4 Within ten Office Days of receipt of the account and supporting statement referred to in Condition 11.2, the Authorised Officer shall assess the amount properly due to the Contractor in accordance with this Contract and notify the Contractor whether the account and supporting documents are approved or rejected having regard to the account and any adjustments including:
 - (a) confirmation that an Order is complete;
 - (b) the valuation of modifications made pursuant to Condition 10;
 - (c) any deductions for defaults issued under Condition 35: and
 - (d) any other additions or deductions under this Contract.

- 11.5 Payments will be made only in respect of Orders that have been confirmed as completed by the Authorised Officer.
- 11.6 Where the Contractor is notified by the Authorised Officer that an invoice submitted is rejected, the Contractor shall re-submit the account within 5 Office Days in a corrected format or agree a meeting with the Authorised Officer.
- 11.7 Within five Office Days of the Council's issue of the certificate in accordance with 11.3 and 11.4, the Contractor shall issue an invoice for any amount due to the Contractor from the Council in accordance with the Council's certification.
- 11.8 Within twenty Office Days of the Contractor's issue of the approved invoice in accordance with Condition 11.5, the Council shall pay the amount correctly invoiced.
- 11.9 For the second, third, fourth, fifth, sixth, seventh and eighth Years of the Contract Period, and for the ninth, tenth, eleventh and twelfth Years of the Contract Period, if extended by agreement, the Detailed Rates and the default deductions for the purposes of this Condition 11 shall be adjusted by a proportion equivalent to the proportionate rise or fall between the Index prevailing for the month of January prior to the Commencement Date and the month of January prior to the first, and subsequent anniversaries referred to above thereof as the case may be.
- 11.10 Payments due to the Contractor after the Termination Date shall be paid by the Council but such payments shall be dependent on the satisfactory completion of the arrangements for handover required under Condition 36.
- 11.11 The payments made to the Contractor will be deemed to include all materials, equipment, travel costs, costs, parking charges, fees, charges, disbursements, expenses, materials and all other associated expenditure incurred in providing the Services. No claims for extra payment will be considered as a result of the Contractor's lack of knowledge of site conditions.

12. VALUE ADDED TAX

- 12.1 Sums payable to the Contractor pursuant to this Contract are exclusive of any VAT.
- 12.2 The Council shall pay to the Contractor in the manner hereinafter set out any VAT properly chargeable on the supply by the Contractor of the Services.
- 12.3 The Contractor shall together with each invoice referred to in Condition 11 notify the Authorised Officer in writing in respect of the Services identified in the invoice and corresponding Order:
- (a) which part or parts of such Services are exempt from VAT;
 - (b) which part or parts of such Services bear a zero rate of VAT; and
 - (c) which part or parts of such Services bear a rate of VAT greater than zero, in each case specifying the exact rate chargeable.

- 12.4 Upon receipt of the Contractor's written notice under Condition 12.3, unless the Council objects to any part of such notice, the Authorised Officer shall calculate the amount of VAT due in accordance with the contents of such notice pursuant to Condition 12.2.
- 12.5 Upon receipt by the Contractor of any certificate made by the Council pursuant to Condition 11.3, being a certificate including VAT, the Contractor shall forthwith issue to the Council a tax invoice in such form as may be required by the Value Added Tax Act 1994 ("the Act") or any amendment or re-enactment thereof or by any regulations made thereunder.
- 12.6 If the Council objects to the VAT shown on the tax invoice and such objection cannot be resolved by the parties by agreement, the Council may require the Contractor to refer to the Commissioners of Customs and Excise ("the Commissioners") any dispute, difference or question in relation to any of the matters specified in Section 83 of the Act.
- 12.7 If the Contractor refers the matter to the Commissioners (whether or not under Condition 12.6 hereof) and the Council is dissatisfied with their decision on the matter the Contractor shall at the Council's request refer the matter to a Value Added Tax Tribunal ("the Tribunal") by way of appeal under Section 83 of the Act whether the Contractor is so dissatisfied or not. Should the Contractor be required to deposit a sum of money equal to all or part of the tax claimed under Section 84(3) of the Act, the Council shall pay an equivalent sum to the Contractor. The Council shall further reimburse the Contractor any costs or expenses reasonably and properly incurred in making the reference (less any costs awarded to the Contractor by the Tribunal).
- 12.8 Upon the final adjudication by the Commissioners or, in the event of a reference to the Tribunal, by the Tribunal, the Council shall pay the amount of the VAT adjudged due to the Contractor. Should the amounts already paid by the Council by way of monies required to be deposited by the Contractor with the Commissioners under Condition 12.7 exceed the VAT adjudged to be due, the Contractor shall forthwith repay such excess to the Council.
- 12.9 Notwithstanding any provision to the contrary in these Conditions the Council shall not be obliged to make any further payment to the Contractor if the Contractor is in default in providing the tax invoice referred to in Condition 12.5.

13. ASSIGNMENT AND SUB-CONTRACTING

- 13.1 Unless any Acts of Parliament, statutory regulations, orders or Codes of Practice state to the contrary, the Council shall not be entitled to assign the benefit of the Contract or any part thereof without the prior written consent of the Contractor which shall not be unreasonably refused withheld or delayed.
- 13.2 The Contractor shall not:
- (a) assign, transfer or novate the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof; or
 - (b) sub-contract the provision of the Services or any part thereof to any person without the prior written consent of the Council, which consent shall be in the discretion of the Council and, if given, may be subject to conditions and shall not in any event relieve the Contractor of any liability or obligation under the Contract and the Contractor shall in any event be responsible for the acts, defaults or neglect of any sub-contractor or its employees, in all respects as if they were the acts, defaults or neglect of the Contractor and, without prejudice to the generality of the foregoing, provided that the Council shall

be entitled to require as a condition of giving a consent to sub-contract, a direct deed of warranty and undertaking at the expense of the Contractor from the authorised sub-contractor to provide and carry out the part of the Services comprised in the authorised sub-contract.

- 13.3 No authorised sub-contractor shall assign transfer, novate or sub-contract the whole or any part of its sub-contract or the benefit or the advantage of the whole or any part of its sub-contract. The Contractor shall ensure that the terms of any authorised sub-contracting arrangement strictly prohibit any such activity by the sub-contractor.

14. ARBORICULTURAL MANAGER

- 14.1 The Contractor shall at all times during the Contract Period ensure that a suitably senior and competent person is appointed as the Arboricultural Manager and is thereby empowered to act on behalf of the Contractor for all purposes connected with this Contract. The Arboricultural Manager shall initially be the person proposed by the Contractor at the time of submission of its Tender. The Contractor shall immediately give notice of any subsequent proposed appointments with details of such person's qualifications, experience and training. Any person proposed to be appointed as Arboricultural Manager must first be approved in writing by the Council, such approval not to be unreasonably withheld.
- 14.2 The Contractor shall inform the Council of the identity of any person proposed to act for any period as deputy for the Arboricultural Manager before the start of that period. Any person proposed to be authorised to act as deputy for the Arboricultural Manager must first be approved in writing by the Council, such approval not to be unreasonably withheld.
- 14.3 The Arboricultural Manager or his appointed deputy shall be the authorised representative of the Contractor and as such is empowered on behalf of the Contractor for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the Arboricultural Manager or his deputy shall be deemed to have been given to the Contractor.
- 14.4 The Contractor shall ensure that at all times during the Contract Period:
- (a) the Arboricultural Manager or his appointed deputy is available to be contacted at all times between 7:00 am and 6:00 pm on each Working Day;
 - (b) there is a telephone number notified to the Authorised Officer in writing at which the Arboricultural Manager or his authorised deputy may in emergencies be contacted at all times; and
 - (c) the Contractor shall liaise and co-operate and ensure that its Employees and supervisors shall liaise and co-operate with the Authorised Officer and comply with the Authorised Officers reasonable requests.
- 14.5 The Arboricultural Manager shall inform the Council promptly and in writing of any instances of acts or omissions on the part of the Council or its employees which may prevent or hinder the Contractor from meeting its contractual obligations and the Council shall advise the Contractor of any action required to be taken by the Contractor in connection with such acts or omissions.

15. PERSONNEL

- 15.1 The Contractor shall at all times during the Contract Period ensure that sufficient numbers of personnel are available to provide the Services in accordance with the Specification (including during Employees' holiday or absence through sickness or otherwise).
- 15.2 Without prejudice to the obligation of the Contractor to provide sufficient competent staff, the Contractor shall ensure that a sufficient reserve of competent staff is available to supervise the Services to the Contract Standard during staff holidays or absence or other situations where the regular staff employed in the provision of the Services are absent or unavailable.
- 15.3 The Contractor shall, prior to the Commencement Date and throughout the Contract Period, engage in and about the provision of the Services only such persons as are careful, skilled, honest, experienced, and trained to the reasonable satisfaction of the Council in the work which they are to perform. The Contractor shall ensure that at all times throughout the Contract Period sufficient numbers of staff who have successfully completed appropriate arboricultural training courses and who hold National Training and Proficiency Council Certificates of Competence for a range of tree maintenance tasks are employed. Full details of the specific competence requirements are provided at Appendix 1 of the Contract.
- 15.4 The Contractor shall ensure that every person employed by the Contractor in and about the provision of the Services is made aware of:
- (a) the task or tasks which that person has to perform;
 - (b) all relevant provisions of this Contract;
 - (c) all relevant policies, rules, procedures and standards of the Council;
 - (d) all relevant rules, procedures and statutory requirements concerning health and safety at work and the provisions of HSWA;
 - (e) fire risks and fire precautions;
 - (f) the need to maintain the highest standards of hygiene, courtesy and consideration;
 - (g) the need to recognise situations which may involve any actual or potential danger or personal injury to any person at any site or location, where possible, without personal risk, to make safe such situations and forthwith to report such situations to the Authorised Officer (and, where such site or location belongs to the Council, to the member of the Council's staff with responsibility for such site or location).
- 15.5 When the Contractor is a Regulated Activity Provider as defined in the SVGA 2006, the parties acknowledge that the Contractor has ultimate responsibility for the management and control of the Regulated Activity (as defined by the SVGA 2006) provided under this Contract and for the purposes of the SVGA 2006.
- 15.5.1 The Contractor shall:
- 15.5.1.1 comply with all of its obligations under the SVGA 2006 including without limitation information sharing, ISA (as defined by the SVGA 2006) referral obligations and checking that a person is subject to monitoring;

- 15.5.1.2 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check undertaken through the Criminal Records Bureau including a check against the adults' barred list or the children's barred list, as appropriate;
- 15.5.1.3 monitor the level and validity of the checks under Condition 15.5.1.2 for each member of staff to ensure that these checks are renewed as and when required and at least every three years and the Authorised Officer shall verify the same on an annual basis;
- 15.5.1.4 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he would not be suitable to carry out the Regulated Activity or who may otherwise present a risk to a recipient of the Services;
- 15.5.1.5 in accordance with the SVGA 2006, refer information about any person providing the Regulated Activity to the ISA where it removes permission for such person to provide the Services (or would have, if such person had not otherwise ceased to provide the Services) because, in its opinion, such person has harmed or poses a risk of harm to a recipient of the Services;
- 15.5.1.6 immediately provide the Council with all information that the Council may reasonably require to enable the Council to verify that the Contractor has satisfied its obligations under this Condition 15.5 and the SVGA 2006;
- 15.5.1.7 ensure that all personnel engaged in Regulated Activity act in accordance with the Council's Inter-Agency Guidelines for their protection detailed at Schedule 9;
- 15.5.1.8 ensure that all personnel working with or alongside children have regard to the need to safeguard and promote the welfare of children; and
- 15.5.1.9 ensure that, in discharging its obligation under Condition 15.5.1.8, all personnel working with or alongside children have regard to the Secretary of State's *Statutory Guidance on Making Arrangements to Safeguard and Promote the Welfare of Children under Section 11 of the Children Act 2004* and any further guidance issued by the Secretary of State pursuant to Section 11 of the Children Act 2004.

15.5.2 The Contractor warrants that at all times for the purposes of this Contract:

- 15.5.2.1 it is appropriately registered in relation to all persons who are or will be employed or engaged by the Contractor in the provision of the Services, and
- 15.5.2.2 it has no reason to believe that any such person:
 - (i) is barred from the provision of the Services; or
 - (ii) is not registered with the ISA,

in accordance with the provisions of the SVGA 2006 and any regulations made there under, as amended from time to time.

- 15.5A The Contractor shall ensure that it, and all personnel involved in providing the Services, act in accordance with the Council's Aggressive Persons Information Sharing Protocol attached at Schedule 9.
- 15.6 The Contractor shall require all personnel that are to be involved in providing the Services to disclose any unspent convictions and inform the Council if anyone does disclose any unspent convictions and not to use any such person for the performance of the Services without the Council's consent.
- 15.7 The Contractor shall be entirely responsible for the engagement and conditions of its personnel and managers including, without limitation, the payment of remuneration.
- 15.8 With respect to the Contractor's performance of the Services:
- 15.8.1 the Authorised Officer may, to the extent necessary to preserve the standards and reputation of the Council, serve a notice on the Contractor instructing the Contractor to take disciplinary action or other action in relation to or alternatively remove from the provision of the Services any person employed or engaged in or about the provision of the Services by the Contractor (which for the avoidance of doubt shall include the Arboricultural Manager or his deputy);
- 15.8.2 if the Contractor has not objected in writing within five Working Days of the date of the notice referred to in Condition 15.8.1, the Contractor shall take such disciplinary action or other action or remove such person from the provision of the Services within any time limit agreed by the Authorised Officer;
- 15.8.3 in the event that the person is removed from the provision of the Services in accordance with Condition 15.8.2, unless the Authorised Officer deems otherwise, the Contractor shall provide a suitable replacement within the time limit agreed by the Authorised Officer;
- 15.8.4 if the Contractor objects to the Council's notice in accordance with Condition 15.8.2, the parties shall meet in a good faith effort to resolve the difference. Any failure in resolving the difference shall be determined by the Expert in accordance with Condition 40; and
- 15.8.5 the Council shall in no circumstances be liable either to the Contractor or to such personnel in respect of any cost, expense, claim, proceeding, liability, loss or damage occasioned by such removal.
- 15.9 The Contractor:
- 15.9.1 in respect of any and all Employees, shall obtain evidence of the Employee's right to work in the United Kingdom by requesting sight of the original copies of such documentation and carrying out all relevant enquiries as required under section 15 of the Immigration, Asylum and Nationality Act 2006 and the Immigration (Restrictions on Employment) Order 2007;

- 15.9.2 shall retain a copy of all documents and other evidence it obtains in connection with any Employee further to Condition 15.9.1 for a minimum period of two (2) years (“the Retention Period”) and shall seek the Employee's consent to provide the Council access to such documents on the written request of the Council to ensure compliance with Condition 15.9.1 in relation to the Services. At the end of the Retention Period, the Contractor shall retain a written record confirming that such documents were obtained and the date upon which they were obtained;
- 15.9.3 acknowledges that, for the purposes of Condition 15.9.2 it will be acting as Data Controller (as defined in the Data Protection Act 1998) where any information, in relation to any Employee, will be passed to the Council and that it will take all such measures and endeavour to obtain any consents from the Employee as may be required to ensure compliance with the Data Protection Act 1998; and
- 15.9.4 will procure that where a sub-contractor engaged by the Contractor to perform any part of the Services employs or engages an employee that such sub-contractor complies with the terms of Condition 15.9.1 to 15.9.3 as if the obligations of the Contractor were obligations of the said sub-contractor.
- 15.10 The Contractor shall prepare a schedule of routine operations for the operation of Services within three (3) months from the Commencement Date which shall be available for reference by the Authorised Officer and the Contractor’s Employees at the depot or such other place that the provision of these Services are provided.
- 15.11 The Contractor shall provide and ensure that all and any of its Employees, who are at any premises of the Council or meeting other persons in the course of the provision of the Services, shall wear such identification (including photographic identification) as may be specified by the Authorised Officer and shall disclose their identity and status as an Employee of the Contractor and shall not attempt to avoid so doing.
- 15.12 The Contractor and its personnel shall, if so required, sign in and out when visiting any of the Council’s land or buildings.
- 15.13 All monies or other items of value found by the Contractor’s Employees at any Council premises, shall be handed to the officer in charge of the premises, or the Authorised Officer, as soon as reasonably practicable; and a written receipt shall be provided by the Council.
- 15.14 At the expiry of the Contract Period or upon the termination of the Contract in accordance with the Conditions, whichever shall first occur, the Council shall be entitled to offer employment to any person employed by the Contractor in the performance or supervision of the Services and in the event of such person accepting employment with the Council, the Contractor shall forthwith release such person from all contracts or service without any payment being made to the Contractor by either the Council or the Employee.

16. SUPERVISION OF PERSONNEL

- 16.1 The Contractor shall provide sufficient qualified managers and senior staff to ensure that the Contractor’s personnel engaged in the provision of the Services are at all times adequately supervised and properly perform their duties to the Contract Standard. Such managers and senior staff must be sufficiently skilled, trained and instructed with regard to all matters relevant to the Services. The Contractor shall prior to the Commencement Date and

throughout the Contract Period keep the Council informed of any changes in such managers and senior staff from time to time.

- 16.2 The Contractor shall ensure that staff engaged in the supervision of the Contractor's Employees have a thorough knowledge of normal operating and emergency action procedures and all potential risk factors.
- 16.3 All the Contractor's personnel engaged in and about the provision of the Services shall be under the control and direction of the Contractor's own managers. The Contractor shall ensure that the Services are provided to the Contract Standard, including completeness of coverage and consistency of quality.

17. HEALTH AND SAFETY AT WORK

- 17.1 The Contractor shall at all times comply with the following health and safety requirements ("the H&S Requirements"), and all subsequent amendments thereof, and all such new requirements as may come into force or being:
- (a) The HSWA;
 - (b) The Management of Health and Safety at Work Regulations 1999;
 - (c) The Construction (Design and Management) Regulations 2007;
 - (d) The Food and Environment Protection Act 1985;
 - (e) The Electricity at Work Regulations 1989;
 - (f) The Workplace (Health, Safety and Welfare) Regulations 1992;
 - (g) All other Acts, Regulations, Orders or rules of law pertaining to health and safety;
 - (h) Approved Codes of Practice and Guidance Notes issued by the Health and Safety Executive; and
 - (i) The Council's own Health and Safety policy.
 - (j) Lifting Operations and Lifting Equipment Regulations 1998;
 - (k) Personal Protective Equipment at Work Regulations 1992;
 - (l) Provision and Use of Work Equipment Regulations 1998;
 - (m) The Work at Height Regulations 2005;
 - (n) The New Roads and Street Works Act 1991;
 - (o) The Highways Act 1980;
 - (p) The Traffic Management Act 2004.

- 17.2 The Contractor shall have in place throughout the Contract Period adequate and appropriate organisation and arrangements in accordance with its written policy to safeguard the health, safety and welfare of its Employees and, to the extent applicable to its activity, that of Council's employees and any other person affected, including members of the public.
- 17.3 The Contractor shall provide the Council with satisfactory evidence of the policy and arrangements, copies of risk assessments relating to this or similar work stating the risk control measures employed and any other health and safety documentation or information deemed reasonably necessary by the Council prior to and/or during the Contract Period. Health and safety shall always be a subject at performance review meetings held under Condition 9 and the Contractor shall ensure that any accidents, incidents, near misses and risk assessments are reported at these meetings. In the case of accidents the Contractor shall ensure that all accidents are reported to the Authorised Officer without delay and as soon as is practicably possible after the accident.
- 17.4 For the avoidance of doubt failure to comply with Conditions 17.1 to 17.3 to the Council's reasonable satisfaction will be considered to be a breach of the Contract and the Council reserves the right to take whatever action is appropriate in the circumstances.
- 17.5 The Contractor shall ensure that all persons who are at work (as defined in the HSWA) in connection with this Contract shall comply with the H&S Requirements. The Contractor shall, at regular intervals, carry out health and safety hazard inspections and risk assessments, which shall be properly recorded with details of remedial actions and timescales.
- 17.6 If at any time the Authorised Officer reasonably considers that the Contractor has failed to comply in any material respect with H&S Requirements are not being complied with he/she shall be entitled to do either or both of the following:
- (a) to instruct the Contractor to cease to carry out the Services (or a specified part thereof) either immediately or within a specified period of time; and/or
 - (b) to instruct the Contractor to take specified steps to secure compliance with the H&S Requirements, or to comply with advice or requirements of the Health and Safety Executive or a proper officer thereof.
- 17.7 The Contractor shall inform the Authorised Officer forthwith upon complying with any such instruction given under Condition 17.6 and if the Authorised Officer subsequently confirms in writing that he/she is reasonably satisfied that the Contractor has so complied, the Contractor shall recommence to provide the Services.
- 17.8 For the avoidance of doubt, all instructions given and works undertaken in order to secure compliance with this Condition 17 shall be deemed not to require or involve a modification under Condition 10, or under any other provision of this Contract. The Contractor shall not be entitled to any payment either for Services not carried out whilst complying with such an instruction, or for any additional work or accumulation of tasks or variation of the programme arising out of, or in connection with, any such instruction.
- 17.9 The Contractor shall maintain a record (the "Accident Book") and investigate the circumstances of all accidents, injuries, fatalities and dangerous/potentially dangerous incidents to his employees and to the public as a result of his performance of the Services as specifically required by HSWA under The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 and notify the Health and Safety Executive accordingly. In addition the

Contractor shall report any defined accident to the Authorised Officer as soon as practicable, and in any case within two days of such accident. In the case of fatalities or incidence of life threatening accidents the Contractor will notify the Authorised Officer of the circumstances immediately.

17.10 The Contractor will indemnify the Council against any breach of the H&S Requirements.

17.11 In the event that the Contractor fails or defaults in complying with this Condition 17, then the provisions of Condition 34 (Default in Performance) and Condition 35 (Termination) may be applied without prejudice to any other rights the Council may have against the Contractor. Any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable time spent by the Council's officers as a result of the default or failure, may be deduced from any sums due (or to become due) to the Contractor under this Contract, or shall be recoverable from the Contractor by the Council as a debt.

18. UNIFORMS AND IDENTIFICATION

18.1 The Contractor shall ensure that staff employed on the Contract shall wear a uniform, such uniform to be approved by the Authorised Officer in advance of it being issued, and to meet the requirements of HSWA and all other applicable legislation.

18.2 Where the nature or the place of any duties upon which the Contractor's Employees shall be engaged in the provision of the Services make the wearing of any special or protective clothing and footwear necessary or appropriate, the Contractor shall provide and shall require his Employees to wear such clothing or footwear. Where the Council's policies, rules, procedures, or standards require any special or protective clothing or footwear to be worn, the Contractor shall ensure that such clothing or footwear is provided for and worn by the Contractor's Employees. Such special or protective clothing or footwear shall be maintained and replaced as necessary by the Contractor.

18.3 No item of clothing or uniform worn by Employees on the Contract shall bear any advertising matter of any sort without the prior written consent of the Authorised Officer,

18.4 The Contractor shall ensure that all of his employees engaged in the performance of the Services shall carry a form of identity approved by the Authorised Officer bearing a recently taken full face photograph of the bearer and make such form of identity available for inspection on request by an officer of the council who similarly discloses his identity or if requested by a member of the public.

18.5 When requested to do so or when communicating with other persons as a representative of the Contractor all persons employed by the Contractor in the performance of the Services shall disclose their identity and shall not attempt to avoid so doing.

19. PREMISES

19.1 The Contractor shall at all times during the Contract Period provide and maintain such premises as are necessary for the proper performance of the Services to the Contract Standard. The Services may be provided from locations of the Contractor's choice, provided that the Contractor can, at all times, deliver the Services and satisfy the Authorised Officer that the Services can be provided to the Contract Standard. The premises shall be both safe and secure for users of the Services, the Contractor's staff, Council employees and other

persons and which provide adequate security arrangements to safeguard the Council's assets and interests.

- 19.2 The Contractor shall at all times keep the Authorised Officer informed as to the location from where the Services are being provided.
- 19.3 The Contractor shall at all times permit the Authorised Officer, the Council's internal and external auditors, and the Audit Commission for Local Authorities and the National Health Service in England, access to all premises occupied for the purposes of this Contract (whether or not the subject of a lease or licence from the Council) and shall ensure that adequate accommodation and facilities are available, as and when required, to facilitate such visits. The Authorised Officer will give reasonable notice of such access requirements except where it is deemed appropriate by the Authorised Officer to gain immediate access, but this will be subject to normal protocol being observed.
- 19.4 The Contractor shall at its own expense put and keep all premises occupied for the purposes of this Contract (whether the subject of a lease or licence from the Council or not) in good and serviceable repair and in such condition as is commensurate with the proper performance by the Contractor of its obligations under this Contract.
- 19.5 The Authorised Officer shall be entitled to serve upon the Contractor a notice in writing requiring the Contractor, within a stated period, such period to be reasonable in the circumstances, to put any such premises into such condition as is reasonably required by Condition 19.7 above and the Contractor shall immediately upon receipt of such notice cause all necessary services to be carried out to comply with such notice. In the event of the Contractor failing to carry out such services, the Council, having given notice to the Contractor shall be at liberty to have such services carried out by such persons as it may choose and the Contractor shall pay to the Council such sum as the Authorised Officer shall certify to have been the cost of executing such services.

20. PLANT, VEHICLES AND MACHINERY

- 20.1 The Contractor shall provide and maintain, at all times during the Contract Period and at its own expense, all such Plant including equipment, vehicles, machinery and materials as are necessary for the provision of the Services to the Contract Standard.
- 20.2 All Plant employed by the Contractor in the performance of the Services at any time must be either owned by or leased to the Contractor or hired by the Contractor pursuant to a contract of simple hire and not hire-purchase which contract must contain a condition permitting the Contractor to assign the benefit of such contract to the Council.
- 20.3 The Contractor shall at all times be fully responsible for the payment of all licensing fees, taxes and insurances required in connection with or arising out of the possession or use of all Plant employed in the performance of the Services.
- 20.4 The Contractor shall put and keep all Plant employed in the performance of the Services at all times in good and serviceable repair and in such condition as is commensurate with the proper performance by the Contractor of his obligations under this Contract. All Plant employed on the Contract shall be of types suitable for the intended purpose and shall be fitted with all guards and any other safety devices as originally fitted by the particular manufacturer and/or required by HSWA.

- 20.5 At the start of the Contract, the Contractor shall provide the Authorised Officer with a complete listing of all Plant employed on the Contract whether owned, leased or hired. This listing shall detail make, type, unique identifying marks, and any other information reasonably required by the Authorised Officer and shall be regularly amended throughout the Contract Period to keep the Authorised Officer aware of the constituent items of the Contractor's Plant. The Contractor should note that failure to provide this information shall be treated as an omission or deficiency and will be subject to the provisions of Condition 34.
- 20.6 The Contractor shall at all times permit the Authorised Officer access to all Plant employed for the purposes of this Contract. The Authorised Officer shall be entitled to serve upon the Contractor notice in writing requiring the Contractor to put any item of Plant into such condition as is required by Condition 20.4 above and the Contractor shall immediately upon receipt of such notice cause all necessary works to be carried out to comply with such notice. In the event of the Contractor failing to carry out such works, the Council shall be at liberty to have such works carried out by such persons as it may choose and the Contractor shall pay to the Council such sum as the Authorised Officer shall certify to have been the cost of executing such works.
- 20.7 The Contractor shall maintain for three years all service, inspection, safety records, etc of all Plant employed on the Contract and such records shall include all formal certificates and other documentation required under applicable legislation. The Contractor shall at all times permit the Authorised Officer access to all such records and shall provide copies on a monthly basis, or as reasonably required by the Authorised Officer, of such records as the Authorised Officer shall specify.
- 20.8 The Contractor shall cause all Vehicles and plant employed on the Contract to bear the Corporate colour, words, devices and/or insignia of Wandsworth Borough Council and the Contractor's logo in such a manner as shall be determined by the Council's Corporate Design Service. On request the Authorised Officer may allow a derogation of the requirement for hired vehicles and plant to be in the corporate colour but may require that approved signs are displayed.
- 20.9 No item of vehicles and plant employed on the Contract shall bear any advertising matter of any sort without the prior written permission of the Authorised Officer.
- 20.10 The Council shall be entitled at its own expense to place information about the Services under this Contract or other Council services on any such vehicle or plant employed on the Contract,
- 20.11 The Council shall be entitled at its own expense to place sponsorship and/or advertising logos on any vehicles and plant employed on the Contract and retain any revenues obtained from such logos,
- 20.12 The Contractor shall be responsible for the security of all equipment and materials used by the Contractor in connection with the provision of the Services and the Council shall be under no liability in respect thereof.
- 20.13 The Contractor shall provide throughout the Contract Period, at its own expense, telephone lines and equipment dedicated to staff employed on the provision of the Services and shall provide and operate facsimile facilities capable of communicating with the Council's and Council's contractors' offices for the transmission and receipt of document copies.
- 20.14 The emissions from any vehicles or Plant employed on the Contract shall be such that each item of vehicles or Plant conforms to or exceeds the "Euro 5" standard set by the European

Commission or such higher standards as shall be specified by the Contractor in his Method Statements or required by law. Unless otherwise approved by the Authorised Officer, all petrol used shall be “lead-free” and “low sulphur” and diesel shall be “low sulphur”.

21. HAZARDOUS MATERIALS

- 21.1 The Contractor shall ensure that all hazardous materials or equipment, whether provided by the Council or by the Contractor, are kept under proper supervision whilst on Council premises or otherwise under the Contractor’s control. All such materials shall be properly and clearly labelled in accordance with the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 and shall not be left unattended at any time during the course of any work being undertaken, except when properly stored. For these purposes hazardous materials shall include any substances which are generally considered to be hazardous or are notified to the Contractor in writing by the Authorised Officer.
- 21.2 Without limitation to the requirements in Condition 21.1, the Contractor shall ensure that all of its staff are aware of and comply with the Control of Substances Hazardous to Health Regulations 2002.
- 21.3 The Contractor shall ensure that any hazardous materials are transported in accordance with the Carriage of Dangerous Goods by Road Regulations 1996 and where any hazardous materials are disposed of this shall be in accordance with the rules and regulations made under these Regulations.

22. INSTRUCTIONS AND COMMUNICATION

- 22.1 All instructions from the Authorised Officer with regard to this Contract shall be issued to the Contractor in writing or, if given verbally, shall be confirmed in writing within ten Working Days.
- 22.2 Instructions from the Authorised Officer will normally be sent by first class post, facsimile, electronic mail or by hand. Unless other means are agreed with the Authorised Officer, the Contractor shall use similar means for his written communication with the Authorised Officer.
- 22.3 All communications whether oral or written between the Contractor and the Authorised Officer, or between the Contractor and any third party on behalf of the Authorised Officer, shall be conducted in the English language.

23. DATA PROTECTION & FREEDOM OF INFORMATION ACTS

- 23.1 The Contractor shall comply with all obligations under the Data Protection Act 1998 and any subsequent statute, orders or regulations insofar as performance of the Services gives rise to obligations thereunder.
- 23.2 The Contractor shall provide the Authorised Officer with such information as the Authorised Officer may need to satisfy him/herself that the Contractor is complying with its obligations under the said Data Protection Act 1998 including (but not limited to) a copy of the Contractor’s registration under the Data Protection Act 1998.

- 23.3 The Contractor acknowledges that the Council is subject to obligations under the Freedom of Information Act 2000 (“FOIA”), the Environmental Information Regulations 2004 (“EIR”), the SVGA 2006 and any subordinate legislation made under that Act or Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation and shall assist and co-operate with the Council (at the Contractor’s expense) to enable the Council to comply with its obligations under such legislation.
- 23.4 The Contractor shall and shall procure that its sub-contractors shall provide the Council with a copy of any requested information under Condition 23.3 within 5 Working Days from the Council’s request and to provide all necessary assistance as reasonably requested by the Council to enable it to comply with its obligations under the FOIA, EIR or the SVGA 2006.
- 23.5 The Contractor acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, the FOIA, EIR or the SVGA 2006 disclose information:-
- a) without consulting with the Contractor; or
 - b) following consultation with the Contractor and having taken its views into account.
- 23.6 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect and copy such records as requested from time to time.
- 23.7 The Contractor acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with Condition 23.5.

24. RECORDS

- 24.1 The Council shall retain title to all Council Data supplied to or compiled or obtained by the Contractor. The Contractor shall carefully safeguard all Council Data in relation to their security, authenticity, confidentiality and accuracy throughout the Contract Period and either pass all Council Data to the Council or, if so directed by the Authorised Officer, ensure their confidential destruction at the end of the Contract Period or earlier if the Authorised Officer reasonably considers that their lodging with the Contractor is no longer necessary for the fulfilment of the Contract. The return or destruction of such records shall be at the Contractor’s expense.
- 24.2 The Contractor shall maintain adequate records, in accordance with best professional practice, of all work carried out in respect of the Services. These records shall be kept in a secure and confidential manner and shall be made available for inspection on demand during normal business hours by the Authorised Officer and/or the Council’s internal and/or external auditors as and when they shall require.
- 24.3 The Contractor shall maintain adequate procedures to reconstruct Council Data that is in computer readable forms swiftly in the event of site disaster or systems failure. The Contractor shall co-operate with the Council and its consultants in any enquiries they may make to be satisfied that such arrangements are adequate and shall comply with any reasonable requirements by the Council in connection with this.

- 24.4 The Contractor shall provide the Authorised Officer, the Council's internal and/or external auditors and the Local Government Ombudsman with full access on demand during normal business hours to examine and copy all correspondence, records, documentation and files created in the provision of the Services, whether stored on paper, microfiche, computer software or other medium.
- 24.5 The Contractor shall comply with all requests for assistance from the Council in respect of audits and other inspections relating to the Best Value Duty and the performance of the Services.
- 24.6 The Contractor shall provide whatever assistance the Authorised Officer may reasonably require in exercising any right under this Condition 24 including, but not limited to, giving the Authorised Officer access to the Contractor's premises.

25. PAYMENTS TO THE COUNCIL/INTEREST ON LATE MONIES/CHARGES

- 25.1 All monies received by the Contractor which are due to the Council shall be remitted to the Council within two Working Days of receipt (or such other period as stated in the Specification), together with a description of the source of the monies, in such form and containing such details as prescribed by the Authorised Officer from time to time.
- 25.2 Where the Contractor fails to pay any monies to the Council before the time stated by the Authorised Officer the Contractor shall be liable to pay to the Council interest at the rate of 4% above Barclays Bank Plc base rate for the time being per annum pro rata for each day or part thereof until the monies are paid to the Council. If the said base rate is abolished or should otherwise cease to exist then it shall be replaced in this Contract by the nearest comparable rate which, in the event of dispute, shall be determined by the Expert in accordance with Condition 40.
- 25.3 Except where expressly authorised by this Contract or where the Authorised Officer has given his/her express written authority or instructions to the contrary, the Contractor shall not make any charges to the other party to any transaction forming part of the Services in respect of any work carried out by the Contractor pursuant to this Contract.

26. ROYALTIES, PATENT RIGHTS AND INTELLECTUAL PROPERTY RIGHTS

- 26.1 The Contractor shall not in connection with the Contract use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any patent or patent rights or any other intellectual property rights and the Contractor shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses which the Council may sustain, incur or be put to by reason or in consequence directly or indirectly of any breach of this provision (whether wilful or inadvertent) and against the payment of any royalties or other monies which the Council may have to make to any person or body entitled to patent rights or any other intellectual property rights in respect of any process, article, matter, or thing used, manufactured, supplied or delivered by the Contractor in connection with the Contract.
- 26.2 All intellectual property rights (this expression used in this Condition 26 includes any patent, patent application, know-how, trademark or name, service mark, design right, registered

design, copyright or other similar industrial or commercial right) in all documents and drawings prepared and provided by the Council to the Contractor in connection with the performance of the Services shall remain vested in the Council.

26.3 All intellectual property rights in all documents and drawings prepared by the Contractor in performance of the Contract shall vest in the Council whether or not derived from the documents under Condition 26.2.

26.4 In the event that the documents and materials produced, as referred to in Condition 26.3 shall contain and/or make use of any software not originating from the Contractor, then the Contractor hereby grants the Council an unlimited licence to use and reproduce that part of the documents or material without payment or fee. The Contractor warrants to the Council that they have the authority to grant such a licence to the Council.

27. CONFIDENTIALITY

27.1 The Contractor shall not without the prior written consent of the Authorised Officer during the Contract Period or at any time thereafter make use of for its own purposes, or disclose to any person (except as may be required by law), this Contract or any information contained therein or in any Council Data that the Council provides or the Contractor generates pursuant to or in connection with this Contract, all of which information shall be deemed to be confidential.

27.2 The Contractor shall not and shall ensure that its Employees do not divulge to any third party any information, including but not limited to Council Data, which comes into its or their possession in the course of providing the Services without the prior express written consent of the Authorised Officer.

27.3 If the Contractor shall appoint a sub-contractor with the consent of the Authorised Officer, the Contractor may disclose relevant confidential information or Council Data to the sub-contractor provided that the sub-contractor gives the Council an undertaking to comply with the confidentiality requirements of the Contract.

27.4 The Contractor's obligations as to confidentiality shall survive any termination of this Contract.

27.5 The Contractor shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this Condition 27.

28. CONFLICT OF INTEREST

28.1 The Contractor shall not, unless otherwise authorised in writing by the Authorised Officer, accept instructions from any person on any matter in relation to which, or in relation to any aspect of which, the Contractor knew, or ought reasonably to have known, that the Council is likely to exercise, or is considering exercising, any of its powers or duties.

28.2 The Contractor shall notify the Authorised Officer immediately of any actual or potential conflict of interest between the Council and any other customer or client (or prospective customer or client) of the Contractor which may arise in connection with the Services. The Authorised Officer will as soon as possible either withdraw the instruction giving rise to the difficulty or agree with the Contractor either that no conflict exists or an acceptable method of averting it.

- 28.3 Where the provisions of Services, or any part thereof, has commenced but the Contractor has (or ought reasonably to have) detected and notified the Authorised Officer of an actual or potential conflict of interest the Authorised Officer shall be entitled to instruct the Contractor, by a modification in accordance with Condition 10, to cease providing that element of the Services.
- 28.4 The Council's payment to the Contractor corresponding to the ceased part of the Services under Conditions 28.2 and 28.3 shall cease and the Council may also recover from any sum due to the Contractor all costs reasonably incurred by the Council in respect of the provision of that part of the Services by the Council or by a third party for like or similar Services to the extent that such costs exceed the payment which would have otherwise been payable to the Contractor for such part of the Services. The amount of any such deduction shall be certified by the Authorised Officer and a copy of such certificate shall be sent to the Contractor. Any dispute over the amount or the reasonableness of the deduction shall be referred for determination by the Expert in accordance with Condition 40.
- 28.5 The Contractor shall have committed a substantial breach of this Contract if it fails to provide all or any part of the Services, when instructed to do so, by reason of having accepted instructions without the written authority of the Authorised Officer as required by Condition 28.1

29. PROBITY AND INDUCEMENTS

- 29.1 The Contractor shall not offer, or give or agree to give, to any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of this Contract, or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person, in relation to this Contract or any other contract with the Council. Nor shall any like act be done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor); nor in relation to this Contract or any other contract with the Council shall the Contractor or any other person employed by it or acting on its behalf commit any offence under the Prevention of Corruption Acts 1889 to 1916 or give any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- 29.2 The Contractor shall not, whether itself or by any partner or director engaged in the provision of the Services, or by any person employed by it to provide the Services, solicit or accept any gratuity, tip or any other form of money, taking or reward, collection, or charge for any part of the Services other than charges properly approved by the Council's Head of Audit in accordance with the provision of this Contract.
- 29.3 The Contractor shall immediately report to the Council's Head of Audit any attempt at bribery, corruption or improper conduct which comes to the Contractor's attention in connection with the Services. Such report shall be made verbally or by facsimile transmission in the first instance, followed by written confirmation. The Contractor shall co-operate with, and provide statements or other evidence required by, the Council, its internal auditors and external auditors, the police or any other competent authority responsible for investigating any possible irregularities connected with this Contract.
- 29.4 If the Contractor shall become aware of, or suspect (or ought reasonably to have become aware of, or suspected) any irregularity with regard to any transaction involving the Council, the

Contractor shall immediately notify details of that irregularity to the Council's Head of Audit, whether or not the Contractor is currently instructed in the matter concerned.

- 29.5 The Contractor shall maintain a policy and procedure for "whistle blowing" in accordance with its Method Statement and shall take all reasonable steps to ensure that all of its personnel engaged in the provision of the Services are aware of and encouraged to apply and follow in relevant circumstances such policy and procedure.

30. LIABILITY OF CONTRACTOR

- 30.1 The Contractor shall fully and promptly indemnify the Council against any liability to any person whatsoever, arising out of or connected with the performance of the Services or this Contract generally, including any default, act or omission of any Employees howsoever such liability may arise.
- 30.2 The Contractor shall fully and promptly indemnify the Council in respect of any damage caused to any land, building or chattel in the ownership, occupation or possession of the Council by any employee or agent of the Contractor (whether such damage be caused by negligence or in any other way whatsoever).
- 30.3 The Contractor shall fully and promptly indemnify the Council and all persons concerned in respect of any personal injury caused to any employee of the Council by any Employee or agent of the Contractor (whether such injury be caused by negligence or in any other way whatsoever).
- 30.4 The Contractor shall comply with all legal and statutory requirements applicable to the provision of the Services and shall indemnify the Council against all actions, claims, demands, proceedings, damages, costs and expenses whatsoever in respect of any breach by the Contractor of such legal and statutory requirements.
- 30.5 Provided always that Conditions 30.1 to 30.4 inclusive shall not apply in respect of any liability to any person, damage to any land, building or chattel or any personal injury caused solely by the Council's negligent or wilful act or omission or breach of this Contract.

31. INSURANCE

- 31.1 The Contractor shall at all times maintain in force such policies of insurance with reputable insurers or underwriters as shall fully insure and indemnify the Contractor against liability:
- (a) to the Council and to any employee of the Council;
 - (b) to the Employees of the Contractor (Employers Liability Compulsory Insurance Act 1969); and
 - (c) to any other person (Public Liability Insurance).

In respect of Conditions 31.1 (a) and 31.1 (c) the insurance cover shall not be less than £5,000,000 (five million pounds) in respect of any one incident or such greater sum as the Authorised Officer may from time to time reasonably specify or as may be required by law. In respect of Condition 31.1 (b) the insurance cover shall not be less than £10,000,000 (ten million pounds) or such greater sum as may be required by law.

- 31.2 Such insurance shall have the interest of the Council endorsed (or an Indemnity to Principal clause) on the policy and the Contractor shall duly pay all premiums therefor and produce to the Council on request receipts therefor and shall not do or suffer or permit anything to be done which might prejudice the policy.
- 31.3 All monies which may at any time be received or receivable under any such insurance shall be applied in replacing or repairing the item of Plant lost or other items, damaged or destroyed or in such other manner as the Council may direct.
- 31.4 The Contractor shall upon request by the Authorised Officer disclose to the Authorised Officer all such policies of insurance, cover notes, premium receipts or other documents as the Authorised Officer may require from time to time and shall, if so requested furnish the Authorised Officer with copies of any such documents.
- 31.5 The Authorised Officer shall be entitled to notify the Contractor in writing that in the opinion of the Authorised Officer any such policy of insurance does not effect sufficient cover to comply with the Conditions and to require the Contractor to effect such insurance as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and effect such insurance as the Authorised Officer shall require and in default the Authorised Officer may him/herself cause such insurance to be effected whereupon the Contractor shall pay to the Council such sum as the Authorised Officer shall certify as being the cost to the Council of effecting such insurance.
- 31.6 The Contractor shall at the request of the Authorised Officer, in the places and in a form approved by the Authorised Officer, arrange for notices to be permanently displayed giving information as to how insurance claims in respect thereof may be made.
- 31.7 The Contractor shall deal with any complaints and/or claims received from whatever source in a prompt, courteous and efficient manner. The Contractor shall acknowledge receipt of any claim within seven days of receipt and shall pass full details of any claim to its insurers within 21 days of receipt or within such shorter time as may be required under the terms of the relevant insurance. The Contractor shall keep a written record of all claims received and of the action taken in relation to such claims. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times. The Contractor shall notify the Authorised Officer in writing within seven days of all claims received and of all steps taken in response thereto.
- 31.8 The provisions of Conditions 31.6 and 31.7 are without prejudice to any provisions concerning claims set out in these Conditions or the Schedules.
- 31.9 The Contractor shall ensure that any sub-contractors of the Contractor maintain like insurance cover to that required to be maintained by the Contractor under this Contract and such other insurance cover as may from time to time be reasonably required by the Council.

32. PERFORMANCE BOND/PARENT COMPANY GUARANTEE

EITHER

- 32.1 Within 14 days of receipt of the Council's written acceptance of the Contractor's Tender the Contractor shall from the Commencement Date at its own expense provide a performance bond (in the form of the draft performance bond contained within the Tender Documents) from a

bank or insurance company approved by the Council in the sum of £100,000 (one hundred thousand pounds) and shall ensure that such bond remains in force throughout the Contract Period and for so long thereafter as is necessary to meet its full financial obligations to the Council. The Contractor warrants and represents to the Council that a Surety acceptable to the Council has agreed to provide the Performance Bond in the terms set out in the Tender Documents.

OR

- 32.1 If the Contractor is a subsidiary company within the meaning of Section 736 of the Companies Act 1985 the Council may require that within 14 days of receipt of the Council's written acceptance of the Contractor's Tender the Contractor shall at its own expense provide a deed of guarantee (in the form of the draft deed of guarantee contained within the Tender Documents) from its ultimate holding company or companies (as defined by the said Section 736) to secure the due performance by the Contractor of its obligations to the Council.
- 32.2 The Council shall be entitled to terminate the Contract pursuant to Condition 35.1(a) should the Contractor be in breach of this Condition 32.

33. LIABILITY OF THE COUNCIL

- 33.1 Nothing in this Contract excludes or limits the liability of the Council for death or personal injury caused by the Council's negligence or fraudulent misrepresentation.
- 33.2 To the extent permitted by the Unfair Contract Terms Act 1977, the Council shall not be liable for any loss or damage (except the negligence of the Council, its officers or employees) and the Council shall in no circumstances the Council shall not be liable to the Contractor for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses, or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Contract.
- 33.3 Subject to Conditions 33.1 and 33.2, the aggregate liability of the Council in respect of all causes of action, loss, damage or liability (whether for breach of contract, in negligence or for any other tort under statute or otherwise) arising out of or in connection with this Contract shall not exceed the lesser of (i) the amount that the Council paid the Contractor in the preceding 12 month period' or (ii) £1,000,000 in the aggregate.

34. DEFAULT IN PERFORMANCE

- 33.1 The Defaults and remedies available to the Council shall be dealt with in accordance with the provisions set out in the default mechanism set out in Schedule 4.

35. TERMINATION

- 35.1 Without prejudice to any other rights and remedies it may possess including its right of termination under Condition 34 above, the Council shall be entitled to give notice to terminate the Contract upon the occurrence of any of the following events or at any time within 28 days of the date when the Council first became aware of such an occurrence. Such notice may take effect immediately, or at such date (not later than 35 days after receipt of the notice) as the notice may specify:

- (a) The Contractor having failed to execute the Contract as a Deed within 14 days of the Commencement Date or failed to provide the performance bond and/or holding company deed of guarantee within 14 days of receipt of the Council's written acceptance of the Contractor's Tender;
- (b) The Contractor being in material breach, which is not remedied within a reasonable time or repeatedly failing to meet the Contract Standard as determined by the Council in its reasonable discretion resulting in the Council being deprived of substantially the whole benefit of substantially any aspect of the Contract;
- (c) The Contractor having been served with more than 25 Default Notices in any six month period;
- (d) The Contractor having failed to perform a substantial part of the Services for a period of seven consecutive days;
- (e) The Contractor or where applicable any director or partner thereof (i) suffering any distress or process of execution to be levied on its goods; (ii) committing any act of bankruptcy or having a bankruptcy order made against him/her; (iii) entering into (whether an individual or body corporate) any arrangement, agreement of composition with and for the benefit of its creditors (including a voluntary arrangement under the provisions of the Insolvency Act 1986); (iv) having a winding-up order made or (except for the purpose of amalgamations or reconstruction) a resolution passed for voluntary winding-up, or having an application made from the appointment of an administrator, administrative receiver or receiver, or an administrator, administrative receiver or receiver having been appointed, over the whole or any part of his business and/or assets; (v) having a provisional liquidator, receiver or manager of the whole or any part of his business appointed; or (vi) having possession taken of any of its property comprised in a floating charge by or on behalf of the holders of any debentures secured by the floating charge.
- (f) The discovery of a material misrepresentation by the Contractor during the tendering process.
- (g) If there shall be any change in control (as defined by Section 840 of the Income and Corporation Taxes Act 1988) of the Contractor or (where the Contractor is a subsidiary company) in its ultimate holding company.
- (h) Any other breach by the Contractor of any of its obligations under this Contract which, in the reasonable opinion of the Council: (1) constitutes a fundamental breach of contract by the Contractor; or (2)) is a serious breach that has been repeated or persisted in by the Contractor after receipt by the Contractor of a written warning that the Council may invoke this Condition in respect of the said breach, and after the Contractor has had a reasonable opportunity to prevent such repetition or persistence.

35.2 Upon such termination or upon termination in accordance with Condition 34 in addition to such consequences as are set out in the other provisions of this Contract:

- (a) The Contractor shall be deemed to be in breach of this Contract (apart from termination under Conditions 35.1(e) and 35.1(g)).

- (b) The Contractor shall, unless requested otherwise by the Authorised Officer, immediately cease to perform any of the Services.
- (c) The Contractor shall be liable immediately to compensate the Council for any loss or damage it has sustained in consequence of any antecedent breaches of this Contract by the Contractor.
- (d) The Contractor shall fully and promptly indemnify and compensate the Council against all loss and damage suffered by the Council by reason of such termination and without prejudice to the generality of this Condition shall fully and promptly indemnify and compensate the Council in respect of the cost of causing to be performed such Services as would have been performed by the Contractor during the remainder of the Contract Period to the extent that such cost exceeds sums as would have been lawfully payable to the Contractor for performing such Services (such costs to include but not be limited to all costs of closing out this Contract and entering into new contracts with replacement contractors). The Council shall be at liberty to have such Services performed by any persons (whether or not servants of the Council) as the Council shall in its entire discretion thinks fit and shall act reasonably but shall be under no obligation to employ the least expensive method of having such Services performed.
- (e) The Council shall be under no obligation to make any further payment to the Contractor and shall be entitled to retain any payment which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due under this or any other Contract or to deduct therefrom any sum due from the Contractor to the Council under this or any other Contract.
- (f) It is hereby agreed that Conditions 25 (Payments to the Council/Interest on Late Monies/Charges); 27 (Confidentiality); 30 (Liability of Contractor); 31 (Insurance); 33 (Liability of the Council); 34 (Default in Performance); 35 (Termination); 36 (Arrangements for Handover on Termination); 40 (Dispute Resolution); 43 (Work in Progress at the End of the Contract Period) and 51 (Information on Re-Tendering) of this Contract shall continue in full force and effect and be enforceable by the Council.

35.3 The rights of the Council under this Condition 35 are in addition to and without prejudice to any other rights the Council may have whether against the Contractor directly or pursuant to any guarantee, indemnity, bond or otherwise.

36. ARRANGEMENTS FOR HANDOVER ON TERMINATION

36.1 If the Contractor does not secure a further contract for the provision of Services or similar successor services, following termination of the Contract for any reason:

- (a) the transition to a successor(s) shall be arranged between the Authorised Officer and the Contractor and the Contractor shall not redeploy within its organisation any person involved in the provision of the Services without the consent of the Authorised Officer; and the Council shall have the right in accordance with Condition 15.14 to offer employment to any person employed by the Contractor in the provision of the Services;
- (b) the Contractor shall co-operate fully with the Authorised Officer during the transition (such co-operation to include provision of full access to all Council Data, documents, manuals, working instructions, reports, and any information whether held in electronic

or written form, which the Authorised Officer considers necessary to achieve effective transition and subsequent provision of the Services or similar services);

- (c) the Contractor at its own expense shall deliver all records relating to the Services to the Council or to the successor(s) or ensure their confidential destruction in accordance with the Authorised Officer's written instructions;
- (d) the Council shall have the following options:
 - (i) to purchase from the Contractor at a fair market price to be agreed between the parties any Plant and other tangible property which is owned by the Contractor and is used exclusively, or for the greater part, in connection with the provision of the Services being provided under this Contract;
 - (ii) to purchase from the Contractor at a price to be agreed between the parties any other equipment and other tangible property which is owned by the Contractor which is used non-exclusively and for the lesser part in the provision of the Services under this Contract and which the parties may agree;
 - (iii) subject to the term of any such third party agreement, to require the Contractor at no charge (save for the payment by the Council of third party charges with respect to such assignments) to assign to the Council any equipment leases, maintenance or support agreements or other arrangements including licences for the use of third party software between the Contractor and third parties which relate to equipment or software used exclusively in connection with the provisions of the Services being provided under this Contract; and
 - (iv) to the extent that the Services being supplied by the Contractor to the Council include any Contractor owned proprietary software then such software shall be and remain the property of the Contractor but the Council may require the Contractor to provide to the Council a perpetual, non-exclusive, non-transferable licence for the Council to utilise (or for its chosen alternative service supplier to utilise on its behalf) without charge the Contractor's software in connection with the Council's continuing performance of the Services contemplated hereunder, subject to the prior execution of a written licence agreement containing fair and reasonable terms and conditions including but not limited to, provisions for the protection of the Contractor's proprietary rights therein.
- (e) the Contractor may request the Authorised Officer to reimburse any additional costs, other than incurred under Condition 35.1 (c), necessarily and properly incurred by the Contractor in providing assistance and co-operation during the transition. Any such request shall be accompanied by such evidence of expenditure and the reasons for it as the Authorised Officer may require. No such requests shall be unreasonably refused.

37. NOTICES

- 37.1 No notice to be served upon the Council shall be valid or effective unless it is sent by pre-paid Recorded Delivery post or delivered by hand to the Authorised Officer at the Town Hall, Wandsworth High Street, London SW18 2PU or to such other address as the Authorised Officer may notify the Contractor in writing.

37.2 Any notice to be served upon the Contractor shall be valid and effective if it is sent by pre-paid post or delivered by hand or by electronic data transmission or faxed to the registered office, principal place of business, or last known address of the Contractor or an address occupied by the Contractor for the purposes of this Contract and notified in writing to the Authorised Officer, or is delivered by hand to a director, partner, proprietor or other responsible representative of the Contractor.

38. WAIVER

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

39. SEVERANCE

If any provision of the Contract shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall not in any way impair or affect any other provision all of which shall remain in full force and effect.

40. DISPUTE RESOLUTION

Expert Determination

40.1 Any matter or dispute to be determined by the Expert under this Contract shall be referred for determination to a person suitably qualified to determine such matter or dispute and who shall be nominated jointly by the Council and the Contractor or, failing agreement as to such nomination within five Office Days to such person as may be appointed, on the application of either the Council or the Contractor, by the President for the time being of the Law Society.

40.2 The Council and the Contractor shall, on request, promptly supply to the Expert all such assistance, documents and information as he may require for the purpose of his determination and both the Council and the Contractor shall use all reasonable endeavours to procure the prompt determination of such reference.

40.3 The Expert shall be deemed to act as an expert and not as an arbitrator and his determination shall be conclusive and binding upon the parties.

40.4 The costs of the Expert appointed hereunder shall be borne by the Contractor and/or the Council in such proportions as shall be directed by the Expert.

Mediation

40.5 In the event of any dispute or difference arising between the parties in connection with this Contract except anything falling for determination by the Expert, senior representative(s) of the parties shall, within 10 Office Days of a written request from either party to the other meet in a good faith effort to resolve the dispute without recourse to legal proceedings.

40.6 If the dispute or difference is not resolved as a result of such meeting, either party may (at such meeting or within 10 Office Days from its conclusion) propose to the other in writing that

structured negotiations be entered into with the assistance of a mediator or neutral advisor (“Mediator”).

- 40.7 If the parties are unable to agree on a Mediator or if the Mediator agreed upon is unable or unwilling to act, either party shall within 10 Office Days from the date of the proposal to appoint a Mediator or within 10 Office Days of notice to either party that he or she is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution, 70 Fleet Street, London, EC4Y 1EU (“CEDR”) to appoint a Mediator.
- 40.8 The parties shall within 10 Office Days of the appointment of the Mediator meet with him/her in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 40.9 Unless concluded with a written legally binding agreement all negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 40.10 If the parties accept the Mediator’s recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and, once it is signed by their duly authorised representatives, shall be binding on the parties. Unless otherwise agreed between the parties, such agreement shall be implemented in full within 30 days of signature failing which it shall be rendered null and void (and may not be referred to in any subsequent legal proceedings) unless legal proceedings have been initiated to enforce it within a further 20 Office Days.
- 40.11 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing, who need only comply with their request if he/she considers it would be helpful. Any such opinion shall not be an attempt to anticipate what a court might order but rather the Mediator’s suggestions as to the settlement terms which are considered appropriate in all the circumstances. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings arising in connection with this Contract without the prior written consent of both parties.
- 40.12 If the parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed then any dispute or difference between them may be referred to the English Courts unless within a further period of 30 days the parties agree to refer the matter to arbitration before an arbitrator whose method of appointment is agreed between them.

41. AGENCY

- 41.1 Neither the Contractor nor its Employees shall in any circumstances hold itself or themselves out as being the servant or agent of the Council otherwise than in circumstances expressly permitted by the Contract.
- 41.2 Neither the Contractor nor its Employees shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of the Council or any other way to bind the Council to the performance, variation, release or discharge of any obligation.
- 41.3 Neither the Contractor nor its Employees shall in any circumstances hold itself or themselves out as having the power to make, vary, discharge or waive any by-law or regulation of any kind.

42. WORK IN PROGRESS AT THE COMMENCEMENT OF THE CONTRACT

- 42.1 It is envisaged that, as far as possible, work commissioned prior to the Commencement Date will be completed by the previous contractor including, where relevant, the Council's Direct Service Organisation. However, where the Authorised Officer considers the need arises, he may instruct the Contractor to provide Services outstanding from, or arising out of the previous contract.
- 42.2 The Council's instructions under Condition 42.1 will constitute modifications under Condition 10 of this Contract (which includes provision for their valuation prior to payment).

43. WORK IN PROGRESS AT THE END OF THE CONTRACT PERIOD

- 43.1 Upon termination or expiry of the Contract the Council reserves the right to do either of the following in relation to such specific cases as the Council sees fit:
- (a) require the Contractor to complete the outstanding case at the Detailed Rate prevailing at the date of instruction (in which case the terms of the Contract will continue to apply in relation to that case until it is complete) notwithstanding the expiry or termination of this Contract for other purposes; or
 - (b) require the Contractor to return the case to the Council together with the file and all relevant documentation in which case the Council's instructions will constitute a modification under Condition 10 of this Contract (which includes provision for its valuation prior to payment).
- 43.2 In relation to cases covered by Condition 43.1.1 above, all such outstanding Services shall be completed within the timescales reasonably stipulated by the Council and no additional payments will be made to the Contractor in respect of them, over and above the normal payments provided for in this Contract.
- 43.3 In relation to cases covered by Condition 43.1.2 above, the Contractor shall include at the front of each file a summary of the current position with the case.
- 43.4 In the event that the Contractor fails or defaults in complying with this Condition 43, then any costs, expenses, liabilities or damages incurred by the Council as a consequence thereof, including the reasonable cost to the Council of the time spent by its officers as a result of the default or failure, may be deducted from any sums due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor by the Council as a debt.

44. ACQUIRED RIGHTS DIRECTIVE, TUPE AND PENSIONS

- 44.1 For the purposes of this Condition, save where the context otherwise requires the following words shall have the meanings set out below: -
- (a) **“Employee Liability Information”** means the information as defined in Regulation 11(2) of the TUPE Regulations.

- (b) **“Final Pay Details”** means in respect of each Future Transferring Employee, their final month's copy pay slip data, cumulative pay for tax and pension purposes, cumulative tax paid and tax code.
- (c) **“Future Transfer Date”** means the date of termination or expiry of this Contract.
- (d) **“Future Transferring Employees”** means those employees of the Contractor who are at the Future Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract pursuant to the TUPE Regulations or the Acquired Rights Directive 2001/23/EC or otherwise to any Successful Tenderer.
- (e) **“Incumbent Contractor”** means Advanced Tree Services.
- (f) **“Relevant Legislation”** means any statute or regulations or the EC Treaty (or any directives or regulations made thereunder).
- (g) **“Required Information”** means the information set out in Conditions 44.2, 44.4, 44.5 and 44.7.
- (h) **“Staff Tender Information”** means the staff tender information set out at part I of Schedule 8.
- (i) **“Staff Transfer”** means the transfer of staff pursuant to the TUPE Regulations under this Contract.
- (j) **“Staff Transfer Information”** means the staff transfer information set out at part II of Schedule 8.
- (k) **“Successful Tenderer”** means the person nominated by the Council to undertake the services substantially the same as the whole or part of the Services at any time during or after the termination of this Contract.
- (l) **“TUPE Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced.

44.2 During the period of 12 months preceding the expiry of this Contract or at any time after notice has been given to terminate this Contract in accordance with Condition 35, the Contractor shall disclose to the Council and shall permit the Council to disclose to any prospective tenderer for services which are substantially the same as the whole or part of the Services, the Staff Tender Information.

44.3 The Contractor shall make reasonable endeavours to assist the Successful Tenderer to communicate with, meet and inform and consult with the Employees whom the Contractor reasonably believes will be a Future Transferring Employee and their trade union or other employee representatives for the purposes of complying with the TUPE Regulations.

44.4 Assuming the Successful Tenderer or the Council is of the view that the TUPE Regulations shall apply to the re-letting of this Contract, the Contractor shall not less than 14 days immediately prior to the Future Transfer Date provide to the Council or the Successful Tenderer all Employee Liability Information and the Staff Transfer Information set out in

Part II of Schedule 8 to this Contract for all employees whom it reasonably believes will be Future Transferring Employees.

44.5 Within a period of 21 days following the Future Transfer Date, the Contractor shall provide to the Successful Tenderer in writing Final Pay Details of the Future Transferring Employees.

44.6 The Contractor warrants that it shall supply complete and accurate information pursuant to Conditions 44.2, 44.3, 44.4 and 44.5 in all material respects and the Contractor shall indemnify and keep the Council indemnified fully now and in the future in respect of all or any losses, costs, awards, liabilities and expenses whether arising in contract, tort (including negligence) or otherwise or under any Relevant Legislation suffered or incurred by the Council by reason of any proceeding, claim or demand arising from or in connection with the provision of information and/or the failure to provide complete and accurate information under Conditions 44.2, 44.4, and 44.5, and/or the provision of assistance and/or failure to provide assistance under Condition 44.3 of this Contract.

For the purposes of this Condition 44.6, losses, costs, awards, liabilities and expenses incurred by the Council shall include those incurred by reason of any contract term between the Council and any Successful Tenderer.

44.7 The Contractor shall not and shall procure that any authorised sub-contractors shall not, without the prior written consent of the Council (which shall not be unreasonably withheld) during the 6 months prior to the termination or expiration of the Contract or at any time between notice of termination given by the Council and termination:

44.7.1 vary, purport or promise to vary the terms and conditions (as amended from time to time) of employment of any employee whom the Contractor reasonably believes will be a Future Transferring Employee (including a promise to make any additional payment or provide any additional benefit);

44.7.2 [give notice to terminate or terminate the employment of any employee whom the Contractor reasonably believes will be a Future Transferring Employee];

44.7.3 remove (permanently or temporarily), vary or reduce the involvement of any employee whom the Contractor reasonably believes will be a Future Transferring Employee in the provision of the Services; or

44.7.4 recruit or engage any employee to be employed in the performance of the Contractor's obligations under the Contract.

44.8 The Contractor warrants that it shall supply the Required Information completely and accurately in all respects at the time of supply and shall indemnify and keep indemnified the Council and/or any Successful Tenderer against all liabilities, obligations, claims, costs and demands suffered or incurred by the Council and/or any Successful Tenderer as a result of any claim or demand made or brought against the Council and/or any Successful Tenderer by any member or former member of Staff or any claim submitted on their behalf by a trade union or employee representative or otherwise on the grounds that his employment and/or any liabilities in connection with such employment or the termination thereof have transferred or should have transferred from the Contractor to the Council and/or any

Successful Tenderer during the continuance of the Contract or as a result of the termination or expiry of the Contract pursuant to the TUPE Regulations or otherwise.

- 44.9 For the purposes of Condition 44.8, in the event that the Council or the Successful Tenderer incurs costs, liabilities or expenditure in respect of Future Transferring Employees which is greater than would have been the case if the Required Information supplied by the Contractor had been accurate and complete, then such (net) greater costs, liabilities or expenditure shall be deemed to be costs suffered or incurred by the Council or Successful Tenderer and included within the indemnity provided by the Contractor.
- 44.10 The Council and the Successful Tenderer shall be entitled to recover from the Contractor in full any legal, accountancy and other costs actually and reasonably incurred by the Council and the Successful Tenderer in connection with the costs and liabilities indemnified by the Contractor and this Condition 44 shall continue in effect for six months following the expiry or termination of this Contract.
- 44.11 Where the Contractor supplies the Required Information to the Council and/or the Successful Tenderer, then:
- 44.11.1 the Contractor shall at the same time notify (as applicable) the Council and/or the Successful Tenderer of any respects in which the facts and matters set out in the information supplied are expected to change between the date on which the information is supplied and the Future Transfer Date; and
- 44.11.2 thereafter, the Contractor shall notify (as applicable) the Council and/or the Successful Tenderer if there are any changes to the information supplied other than expected changes of which (as applicable) the Council and/or the Successful Tenderer was notified pursuant to Condition 44.11.1.
- 44.12 Notwithstanding any other provision of the Contract, in accordance with the Contracts (Rights of Third Parties) Act 1999, any Successful Tenderer shall be entitled to enforce the benefits conferred on it under this Condition 44. The consent of the Successful Tenderer shall not be required for the variation of this Condition, even if that variation affects the benefits conferred on any Successful Tenderer.

EITHER: A

44.13 Indemnity where transfer not expected

- (a) Subject always to the manner in which the Contractor in fact performs the Contract, the parties do not expect the letting of this Contract to amount to the transfer of an undertaking or part of an undertaking within the TUPE Regulations or within the Directive (or any amendment or re-enactment thereof). The Council makes no representation of fact or law and gives no warranties in this respect whatsoever.
- (b) The Contractor undertakes that if:
- (1) it does not in all material respects act in accordance with the answers given by it to the Council in the form headed "TUPE Questionnaire", and

- (2) the letting of this Contract amounts to a transfer of an undertaking (and irrespective of any question as to whether that consequence has or has not followed from the Contractor's failure to act in accordance with its answers as aforesaid),

then the Contractor shall indemnify and keep indemnified the Council against any liability (whether to employees or former employees of the Council or otherwise) which the Council may have as a result of any failure to fulfil its obligations under r.13 of the TUPE Regulations and/or a.7 of the Directive, together with all the reasonable costs and expenses incurred by the Council in resisting or otherwise dealing with any proceedings that consist of or include a claim that it has failed to fulfil such obligations.

Where the conditions mentioned in sub-paragraphs (a) and (b) above are fulfilled, the Contractor further undertakes to indemnify and keep indemnified the Council against all the reasonable costs and expenses incurred by the Council in consequence of any proceedings wholly or partly directed to the determination of whether there is or is not a transfer of an undertaking upon the letting of this Contract. Provided always that the Contractor shall be under no such liability if it has obtained the Council's prior written consent to its acting otherwise than in accordance with its said answers, and such consent shall not be unreasonably refused.

(c) In the event that:

- (1) the letting of this Contract amounts to a transfer of an undertaking;
- (2) the Council makes any payment to an employee in connection with his or her redundancy (whether a statutory redundancy payment or otherwise); and
- (3) such employee subsequently makes a claim against the Contractor in connection with the termination of his employment, and the amount of the Contractor's liability (if any) to the employee is or might properly be reduced by reference to the payment mentioned in (b) above,

then the Contractor shall account to the Council in such sum as represents the amount by which the Contractor's liability has been or might have been so reduced.

(d) In the foregoing provisions:

- (1) references to an undertaking include a part of an undertaking; and
- (2) for the purposes of this paragraph, it shall be conclusively presumed that the letting of this Contract amounts to the transfer of an undertaking if it is so held by a Court or Tribunal pursuant to whose decision or determination the liability in respect of which the indemnity is sought has arisen, whether or not the Contractor was made a party to the proceedings in question.]

OR: B

44.13 Indemnity where the Council expects there to be a Transfer

- (a) The parties consider that the letting of this Contract amounts to the transfer of an undertaking or part of an undertaking within the TUPE Regulations and/or within the

Directive (or any amendment or re-enactment thereof). The Council makes no representations of fact or law and gives no warranties in this respect whatsoever.

- (b) The TUPE Employees are the employees whom the Council considers are employed in the undertaking or part of an undertaking concerned (but the Council makes no representations of fact or law and gives no warranties in this respect whatsoever).
- (c) The Contractor shall give to the Council all such information as is requested for the Council to fulfil its obligations under r.13 of the Regulations and/or a.7 of the Directive and shall do so at such time as is so requested, and in the event of the Contractor's non-compliance with these obligations the Contractor shall indemnify and keep the Council indemnified against any liability (whether to the TUPE Employee or otherwise) which the Council may have as a result of any failure to fulfil its own obligations as aforesaid, together with all the reasonable costs and expenses incurred by the Council in resisting or otherwise dealing with any claim that it has failed to fulfil such obligations.
- (d) The Contractor undertakes that if:
 - (1) it does not in all material respects act in accordance with the answers given by it to the Council in the form headed "TUPE Questionnaire", and
 - (2) the letting of this Contract does not amount to a transfer of an undertaking (and irrespective of any question as to whether that consequence has or has not followed from the Contractor's failure to act in accordance with its answers as aforesaid), then the Contractor shall indemnify and keep indemnified the Council against any liability whatsoever to the TUPE Employees or any of them arising by reason of or in connection with any termination or purported termination of their employment by the Council, together with all the reasonable costs and expenses incurred by the Council in resisting or otherwise dealing with any claims by the TUPE Employees or any of them or their representatives that it is or may be so liable. Provided always that the Contractor shall be under no such liability if it has obtained the Council's prior written consent to its acting otherwise than in accordance with its said answers, and such consent that shall not be unreasonably refused.
- (e) The Contractor undertakes that if:
 - (1) it does not deal with the TUPE Employees or any of them in the manner required by the Regulations or the Directive; and
 - (2) the letting of this Contract does amount to a transfer of an undertaking,

then the Contractor shall indemnify and keep indemnified the Council against all the reasonable costs and expenses incurred by the Council in consequence of any proceedings wholly or partly directed to the determination of whether there is or is not a transfer of an undertaking upon the letting of this Contract.
- (f) In the foregoing provisions:
 - (1) references to an undertaking include a part of an undertaking; and

- (2) for the purposes of this paragraph, it shall be conclusively presumed that the letting of this Contract amounts to the transfer of an undertaking if it is so held by a Court or Tribunal pursuant to whose decision or determination the liability in respect of which the indemnity is sought has arisen, whether or not the Contractor was made a party to the proceedings in question.

45. PRESS AND PUBLICITY

- 45.1 The Council's aim is for the highest standard of presentation of the image of its activities to the public, and to ensure a fair and favourable reputation for its services via effective communication to the media and the public. The Contractor shall at all times comply with the Council's Code of Practice for Publicity as notified to the Contractor from time to time. Without limitation the main provisions of the aforementioned Code are as set out in this Condition 45.
- 45.2 All information and publicity concerning the Council's activities, and those of the Contractor in connection with this Contract, shall be subject to prior approval by the Authorised Officer.
- 45.3 All enquiries received by the Contractor from press, radio, television or other media which may concern the Council shall immediately be referred to the Authorised Officer for attention by the Council's Press Office.
- 45.4 The Contractor shall not advertise the fact that it is providing services to the Council other than with the prior written consent of the Authorised Officer.
- 45.5 The Contractor shall notify the Authorised Officer well in advance of any activity under this Contract that is likely to achieve publicity, to enable the Council's Press Office to take a positive approach to such activities and deal with them appropriately.
- 45.6 The Contractor shall not use or adapt the Council's corporate logo or image without prior written approval of the Authorised Officer.
- 45.7 The Contractor shall not permit the placing or fixing of any advertising material whatsoever on or in the Council's premises without the prior approval of the Council.
- 45.8 The Contractor shall take all reasonable steps to ensure the observance of the provisions of this Condition 45 by its Employees and sub-contractors.

46. ASSISTANCE WITH LEGAL AND/OR OMBUDSMAN PROCEEDINGS

- 46.1 If requested to do so by the Authorised Officer, the Contractor shall provide to the Authorised Officer all relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council arising out of the provision of the Services or the Contractor's presence on any Council premises and the Contractor shall give evidence or assistance as required in any such inquiries, arbitrations, proceedings, hearings or tribunals.
- 46.2 Where the Contractor or any of its Employees become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services or in any way connected with the Services, then the Contractor shall

notify the Authorised Officer thereof immediately in writing. Such notification shall include all relevant information to enable the Authorised Officer to fully investigate the matter.

- 46.3 The Contractor shall fully co-operate with and provide assistance and all relevant information to the Council and the Commission for Local Administration in England (“the Ombudsman”) in any inquiries or investigations carried out by or on behalf of the Ombudsman in matters of alleged maladministration or injustice or any other matter arising in connection with the provision of the Services under the Contract.
- 46.4 If, as a result of such inquiry or investigation, the Ombudsman makes a finding against the Council of maladministration or injustice or other finding and if the finding is found to be attributable wholly or in part to the actions or omissions of the Contractor then (without prejudice to any other rights or remedies available to the Council under the Contract or any other contract with the Contractor) the Council shall be entitled to recover from the Contractor (whether by deduction from any monies due to the Contractor or otherwise) such proportion of any award made against the Council to a complainant and related costs as are attributable to those actions or omissions of the Contractor.
- 46.5 In the event of a dispute as to the proportion of the award and costs payable by the Council and the Contractor pursuant to any finding of the Ombudsman as aforesaid then the parties shall seek to resolve such dispute pursuant to the provisions of Condition 40.
- 46.6 Any information provided or assistance rendered by the Contractor pursuant to the obligations in this Condition 46, in whatever form, shall be provided at no cost to the Council.

47. RECOVERY OF SUMS DUE TO THE COUNCIL

- 47.1 Without prejudice to any other Condition herein, whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this or any other contract with the Council and notwithstanding anything herein contained where the Contractor is obliged to carry out any work, act or thing or to pay money for obtaining any thing, document or advantage (for example, but not exclusively, insurance or a bond) then in the event of the Contractor not carrying out any such work, act or thing or obtaining such thing, document or advantage the Council shall be entitled to carry out such work, act thing and/or obtain such thing, document or advantage by itself or others and shall be entitled to obtain reasonable reimbursement of the actual expenses thereof by deduction from the next or subsequent payments due to the Contractor or shall be entitled to recover such reasonable expense (with interest payable from 28 days next after a demand has been made therefor by the Council at four per cent over the rate current for Barclays Bank plc base rate and such interest shall run from day to day and shall accrue before and after any judgment and shall be compounded monthly on the amount overdue until payment of the original expense) by action against the Contractor as a debt and in reasonably carrying out any such work act or thing or obtaining such thing document or advantage the Council shall be under no obligation to employ the least expensive method of carrying out such work, act thing or obtaining such thing, document or advantage.
- 47.2 “Expense(s)”, “cost(s)” or any similar word or expression where recoverable by the Council shall include the Council’s reasonable establishment charges (including the making up of the account and the recovery of the expense(s), cost(s) or the like).

48. EQUAL OPPORTUNITIES, EMPLOYMENT AND HUMAN RIGHTS

- 48.1 The Contractor shall not discriminate directly or indirectly, or by way of victimisation or harassment, against any person on grounds of sex, disability, colour, race, nationality, marital status, gender reassignment, religion, belief, sexual orientation, age or ethnic or national origins contrary to the Race Relations (Amendment) Act 2000, Disability Discrimination Act 2005, the Employment Equality (Age) Regulations 2006, Equality Act 2006, the Equality Act 2010 or Public Interest Disclosure Act 1998 or any statutory modification or re-enactment thereof or any other statutory provision relating to discrimination in employment or the provision of services.
- 48.2 The Contractor shall, for purposes of ensuring compliance with Conditions 48.1 above, in relation to Employees employed in the performance of the Contract, observe as far as possible the provisions of the Commission for Racial Equality's Code of Practice in Employment, and any other comparable statutory code, including but not limited to, those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.
- 48.3 The Contractor shall monitor the representation among Employees of persons (i) of different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics or successor body), (ii) of different gender, and (iii) with a disability; having regard to the Council's procedures for monitoring representation among its own employees.
- 48.4 The Contractor shall 12 months from the Commencement Date and annually thereafter submit a report to the Council demonstrating its compliance with Conditions 48.1, 48.2, and 48.3.
- 48.5 In addition to the report referred to in Condition 48.4, the Contractor shall provide such additional information as the Council may reasonably require for the purpose of assessing the Contractor's compliance with Conditions 48.1, 48.2, and 48.3.
- 48.6 The Contractor shall notify the Authorised Officer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under any Act set out at Condition 48.1.
- 48.7 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of this Contract being in contravention of the Race Relations Act or any of the other Acts set out at Condition 48.1, the Contractor shall, free of charge:
- (a) provide any information required in the timescale allotted;
 - (b) attend any meetings as required and permit Employees to attend;
 - (c) promptly allow access to and investigation of any documents or data deemed to be relevant;
 - (d) allow itself and any Employees to appear as witnesses in any ensuing proceedings; and
 - (e) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

- 48.8 Where any investigation is conducted or proceedings are brought under the Race Relations Act or any other Act set out at condition 48.1 which arise directly or indirectly out of any act or omission of the Contractor, its agents, sub-contractors or Employees; and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.
- 48.9 The Council is committed to recognising the needs of people with disabilities in the delivery of services. As part of this commitment the Council has endorsed the “Agenda on Customers” produced by the Employer’s Forum on Disability and commends the principles covered by the Agenda to contractors providing a service on the Council’s behalf. The Agenda is reproduced at Schedule 5.
- 48.10 The Contractor shall in performing the Contract comply with the Human Rights Act 1998 as if the Contractor was a public authority within the meaning of section 6(3) of the Human Rights Act 1998.
- 48.11 In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on its sub-contractors in terms substantially similar to those imposed on it pursuant to this Condition 48.

49. COUNCIL POLICIES AND CUSTOMER CARE

- 49.1 The Council has a number of policies which are relevant to this Contract, some of which are embodied in the Conditions or Schedules. The Council reserves the right to issue details of its policies or initiatives from time to time during the Contract Period. The Contractor (and its personnel) shall act consistently with such policies or initiatives at all times during the Contract Period. Some of the most prominent Council policies and initiatives with which the Contractor shall comply are summarised below.
- 49.2 The Council’s commitment to provide customers with high quality value for money services is set out in its own quality initiatives. The Contractor’s main responsibilities are to:
- (a) familiarise itself with the contents of any customer care standards of which it is notified by the Authorised Officer and act accordingly;
 - (b) ensure that it satisfies the aims and standards of the initiatives;
 - (c) demonstrate highest standards of customer care including being polite, helpful and courteous at all times;
 - (d) express all written communications clearly and concisely, keeping technical jargon to a minimum;
 - (e) identify the names of its key staff contacts;
 - (f) adopt a professional telephone manner – calls should be answered promptly and courteously, messages should be clear and responded to;

- (g) be aware of the different needs of the client and others affected by the Contract and take account of particular requirements for reasons of age, gender, race or disability; and
- (h) set up and operate a complete complaints procedure in accordance with this Condition 49.

50. COMPLAINTS IN RESPECT OF SERVICE PROVISION

- 50.1 At the Commencement Date the Contractor shall set up a clearly defined complaints procedure (subject to approval by the Authorised Officer) with agreed performance measures and recording systems, including a Complaints Register, to enable the number and types of complaints to be checked and monitored. For each complaint the records should identify the complainant, the nature and category of the complaint, the action taken in response to the complaint, preventative action taken to stop similar occurrence and the relevant dates.
- 50.2 The Contractor shall deal with all complaints received from whatever source in a prompt courteous and efficient manner and within the requirements and timescales set out in Schedule 6 as amended by the Council from time to time.
- 50.3 The Contractor shall notify the Authorised Officer forthwith in writing of all complaints received and the steps taken in response thereto and shall provide a copy of each written complaint (or Register entry for verbal complaints) and the response thereto. A copy of the Complaints Register and statistics shall be incorporated within the Contractor's monitoring reports submitted to the Authorised Officer in accordance with the Specification.

51. INFORMATION ON RE-TENDERING

If requested to do so by the Authorised Officer, the Contractor shall provide to the Council any and all relevant information to permit the Council to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services. The information required shall be sufficient to enable the Council to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise. For the avoidance of double, this obligation shall extend to all workforce information necessary to enable the Council to comply with its duties under the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended, and set out in detail in Condition 44. Such information provided pursuant to this Condition 51 shall be at no cost to the Council.

52. INFORMATION TECHNOLOGY

- 52.1 For the purposes of providing the Services the Contractor may make use of computer systems and equipment of its own choice at its own expense and operate these from locations of its own choice.
- 52.2 The Authorised Officer shall be notified and consulted regarding any and all significant systems and equipment changes which materially affect the functional performance of any systems and the Contractor shall have due regard to any comments that the Authorised Officer may have in respect of such changes. In the event that the Authorised Officer shall have reasonable grounds to disapprove of any suggested change to the systems and equipment, the Contractor shall be instructed not to implement such change.

- 52.3 The majority of the Services will be capable of being undertaken on Working Days between 8am and 6pm, however, the Contractor may occasionally need to programme for the Services to be provided in evenings and at weekends in order to achieve the Contract Standard. The tendered Annual Sum is deemed to include the Contractor's charges for such instances.
- 52.4 The Contractor shall ensure the protection of all Council Data and archive material from unauthorised access, tampering and system failures.
- 52.5 All data shall at all times remain the property of the Council, and the Contractor shall carry out all work in a secure environment.

53. ENVIRONMENTAL REQUIREMENTS

53.1 The Council is committed to minimising its impact on the environment and continually improving its environmental performance. As part of this commitment the Council has adopted an Environmental Ambition Statement which can be downloaded from <http://www.wandsworth.gov.uk/info/200105/sustainability> and includes the Council's 2010 environmental ambition statement, which is a summary of our aims, the sustainable purchasing policy, which is aimed at the Council's suppliers and the environmental action plan, which sets out the Council's environmental aims. The Council commends its Principles of Action to the Contractor in connection with its provision of the Services. These Principles of Action include without limitation the following: -

- (a) pursuing value for money by considering whole life costs;
- (b) resource efficiency by minimising use of natural resources; avoiding waste; re-use, recycling and composting;
- (c) reducing carbon emissions and adopting low carbon technologies to mitigate the effects of climate change;
- (d) limiting habitat destruction, for example by giving preference to accredited products from sustainable sources; and
- (e) minimising all forms of pollution and associated environmental risks.

53.2 The Contractor shall keep the Authorised Officer fully informed of all of its activities that enable the Council to improve its implementation of its Environmental Policy.

53.3 In order to enable the Council to comply with relevant regulatory requirements, including without limitation the Climate Change Act 2008, the Contractor shall:

53.3.1 Sustainable Procurement

Perform its obligations under the Contract in accordance with the Council's Environmental Policy, including without limitation the conservation of energy, water, wood, paper and other resources, the reduction of waste and use of ozone depleting substances and the minimisation of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

53.3.2 Calculation of CO2 Emissions

Provide to the Council, where relevant, for each year during the Contract Period ending on 31st March the following data, in such format as the Council may require:

- (a) the amount of energy (for example and without limitation gas, electricity, oil) used by any stationary sources (i.e. premises) in connection with the Contractor's performance of its obligation under the Contract; and
- (b) either the total distance travelled by each type of vehicle and its fuel type, or the total quantity of each fuel type, used in connection with the Contractor's performance of its obligations under the Contract.

54. RIGHTS OF THIRD PARTIES

Subject to Condition[s] 44.12 *[to be included if this latter provision has been included in the Contract:* and 44.14], the parties do not intend any provision of this Contract to be enforceable by a third party by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999.

55. LAW

The Contract and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with English Law. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute, claim or matter that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

56. ACTS OF PARLIAMENT ETC

Reference to any Act of Parliament, or to any Order, Regulation, Statutory Instrument, or the like shall be deemed to include a reference to any amendment or re-enactment of the same and shall include all Codes of Guidance and any other supplemental circulars or guidance made or issued pursuant thereto.

57. INTERPRETATION ACT

Section 6 of the Interpretation Act 1978 shall apply to the Contract and words importing individuals shall be treated as importing Corporations and vice versa. Masculine includes the feminine and the singular includes the plural and vice versa.

58. HEADINGS

Headings in the Contract Documents are for ease of reference only and shall not affect the construction of the Contract.

59. RESTRICTION ON TRADE

Upon the expiry or sooner termination of this Contract for whatever reason the Contractor, and any associated company or person, shall not:

- (a) for a period of one year solicit the services of any employee of the Council or any employee to be transferred upon termination of this Contract;
- (b) use or disclose any information of a confidential or commercial nature acquired by it during the performance of the Services under this Contract; or

- (c) adopt any livery, style or name likely to cause any person to confuse the Services of the Contractor with the services of the Council or any of its contractors.

60. MANAGEMENT INFORMATION

- 60.1 The Contractor shall comply with the monitoring arrangements set out in the Contract, including but not limited to, providing such data and information as the Contractor may be required to produce under this Contract.
- 60.2 Where requested by the Council, the Contractor shall supply the Management Information to the Council monthly during the Contract Period.
- 60.3 Upon receipt by the Council of the Management Information supplied by the Contractor, the Contractor hereby consents to the Council:
 - 60.3.1 publishing on their website or in any alternative media the Management Information;
 - 60.3.2 storing and analysing the Management Information and producing statistics; and
 - 60.3.3 sharing the Management Information or any statistics produced using the Management Information, with any other Contracting Authority.
- 60.4 The Council may require other information to be included in the Management Information which the Contractor is required to supply and in the event that the Council does require other information to be included in the Management Information the Council shall give the Contractor at least one (1) month's written notice of such changes.

SCHEDULE 1

Specification

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1 PREAMBLE AND GENERAL INFORMATION

1.1 The Duty. The Specification mainly, but not solely, relates to the Parks and Bereavement Services' Mission Statements:

- a) To create excellent and enjoyable green spaces for all;
- b) To provide a cohesive service of beautiful green spaces to encourage fun and relaxation. These will support a range of activities and opportunities encompassing goals of biodiversity, access, learning, safety, well being and continuous improvement;
- c) To provide attractive and sympathetic burial and cremation facilities;

And to the stated Service aims:

- d) make effective use of current resources;
- e) value staff and contractors as part of a team;
- f) act fairly in resolving conflicts and competing needs;
- g) maintain the Borough tree stock through a programme of regular inspection and pruning;
- h) make it easy to contact us and show that we are listening to what our customers tell us;
- i) work in partnership to improve the quality of green spaces and create new ones;
- j) encourage our contractors to share our vision and values;
- k) be innovative in our approach and seek external recognition of our successes;
- l) ensure adequate long term investment and maintenance;
- m) ensure that the Service is professional, caring and responsive to the needs of all of the community;
- n) ensure that burial and cremation facilities offer a fitting long term memorial to the deceased and a suitable environment for the bereaved;
- o) provide the public with realistic choices in funeral arrangements;
- p) manage burial land in the light of obligations to future generations and as ecological, amenity and historic assets; and
- q) provide the Service in an efficient and cost effective manner.

1.2 The Specification also relates to the Council's powers and duties as a principal litter authority under Part (iv) of the Environmental Protection Act 1990. The Council has a duty to keep its parks, commons and open spaces clean and clear of litter.

1.3 Continuous Improvement. The Council is committed to the principle of continuous improvement and providing a high quality and Best Value Service that is recognised as such by residents, workers, visitors and businesses in the Borough. The attention of the Contractor is drawn to Condition 8.2 and the requirement that he shall have a policy of continuous improvement in relation to the performance of the Services. The Contractor's Method Statement shall show how he will maintain such a policy.

1.4 This Contract brings together a number of services and functions that have previously been performed under separate contracts.

1.5 The Contract will require and encourage a new approach by the Contractor to the Services that will include the Contractor working with the Authorised Officer to develop appropriate and meaningful local performance indicators.

- 1.6 The Council sets the Authorised Officer targets to achieve against various Indicators. These require a high standard of maintenance to be achieved at all times equally throughout the Borough and, where appropriate, improvements to place the Council in the top quartile when compared with like Boroughs.
- 1.7 At performance review meetings, the Authorised Officer will discuss with the Contractor the Contract performance and the Borough's performance to ascertain:
- a) how the achievements against the Council performance indicators relate to set targets;
 - b) how the achievements against the Contractor's performance indicators relate to set targets;
 - c) how the Council compares with other authorities;
 - d) what targets the Authorised Officer should suggest be adopted by the Council to maintain continuous improvement;
 - e) what targets the Contractor should set for his own performance to maintain continuous improvement;
 - f) what measures the Contractor should implement to improve his performance;
 - g) what measures the Council should implement to improve the Borough's performance; and
 - h) any other relevant matters concerning the performance of the Services.
- 1.8 Annually the Authorised Officer will advise the Contractor of the Council's performance against the overarching and prime indicators and will utilise this information in deciding the level, if any, of any rebate (Condition 35.9) of deductions made under Condition 35 during the preceding year. If the Authorised Officer is satisfied that substantial improvements have been achieved but targets have not been met, then he may authorise a percentage rebate of such deductions.
- 1.9 Programmes of Works. The Contractor shall provide and maintain Works Programmes for all of the operations and duties required to provide the Services in this Specification. The Works Programmes shall be fully supported by and supportive of the Detailed Method Statements (Schedule 6) that once agreed and approved by the Council shall form parts of the Contract. Works Programmes shall be provided for each distinctive work unit; that is individual staff members or teams of staff assigned to the continuous provision of a contract task or range of tasks and shall provide the daily sequence of work for each "unit". The Contractor shall submit his proposed Works Programme to the Authorised Officer for approval (which approval shall not unreasonably be withheld) at least 30 days before the Commencement Date.
- 1.10 By no later than 08.00 hours on each Working Day the Contractor shall provide the Authorised Officer with separate reports:
- a) detailing the works for that Day for each "unit" in accordance with the "programmes";
 - b) known variations to works due in accordance with the "programmes" with reasons for the variations and plans for reprogramming (without delay);
 - c) reports detailing all works completed in the previous Working Day, in accordance with the "programmes", to include details of all planned works that were not completed together with reasons for the failure to complete and proposals for subsequent completion;

- d) reports, as appropriate providing details of any damaged, defective or missing items of parks furniture; of damage, graffiti or similar to any facilities, fixtures or fittings;
- e) reports, as appropriate providing details of any other incident, or tasks completed, not included in any of the above.

- 1.11 Where the Authorised Officer requires any variation to the Services under Condition 10 or notifies the Contractor of any change to the operations schedule or requires, under any other power, a change to the manner in which a Service is performed, then the Contractor shall, within seven Working Days or such longer period as shall be agreed, submit to the Authorised Officer, in writing, any consequent changes he proposes to the Programme of Works. The Authorised Officer will agree such longer period than seven days that is reasonably required to implement any major change to the services.
- 1.12 The Contractor shall obtain the sanction of the Authorised Officer prior to any permanent or temporary changes to the approved Programme of Works required by the Contractor shall sanction any permanent change then the Contractor shall not implement any such change until it has been approved in writing by the Authorised Officer. Temporary changes of a strictly short term nature to overcome operational problems may be sanctioned orally by the Authorised Officer. The costs of any such change shall be met by the Contractor.
- 1.13 Delay. If the Contractor should find that access to a particular site is so obstructed or is so hazardous that the Service at that place cannot safely be completed in accordance with the Work Programme or as required by the Specification, then the Contractor shall inform the Authorised Officer without delay. The Contractor and the Authorised Officer shall immediately discuss the matter to decide on the best practical way to provide all or part of the required Service. Thereafter the Contractor shall provide such alternative Service as the Authorised Officer shall reasonably require at no extra cost unless the Authorised Officer shall agree that all or part of the Service shall not be provided.
- 1.14 Where any factor causes a general delay to all or part of the Services the Contractor shall inform the Authorised Officer of the causes and likely period of the delay as soon as he becomes aware of the situation. Thereafter, the Contractor shall regularly keep the Authorised Officer informed of the state of the affected Services. On request from the Contractor, the Authorised Officer will allow a reasonable request from the Contractor, the Authorised Officer will allow a reasonable extension of time to complete any delayed Service where this is practical and does not conflict with other parts of the Services or direct the Contractor not to provide a specific part of the Services as the Contractor's proposal will conflict with the proper provision of other parts of the Services.
- 1.15 Where, because of any delay, the Authorised Officer directs that a part of the Services shall not be provided and he is of the opinion that the Contractor could not reasonably be expected to have foreseen the cause and provided alternative methods of completing that part of the Service by the set time, then the failure to provide that part of the Services shall not be taken to be an omission or deficiency for the purposes of Condition 35.
- 1.16 The Contractor should note that any failure to adhere to the approved Works Programmes (including any approved changes) constitutes an omission or deficiency as detailed in Condition 35.

- 1.17 Contract Monitoring. The Contractor shall pay particular attention to the need to supervise his workforce in carrying out the Services. Each Working Day the Contractor shall provide information reasonably required by the Authorised Officer at specified times so that the Authorised Officer can determine whether the Services have been completed. The Contractor shall take such measures as are necessary to rectify any omission or deficiency or to deal with any difficulty in providing the Services and such measures shall be contained in the information presented to the Authorised Officer. The Contractor shall not rely upon the Authorised Officer to inform him where any omission or deficiency in the provision of the Services has occurred and the Contractor shall be held by the Council to be in fundamental breach of contract pursuant to Condition 36.1 (b) should the Contractor fail to comply with this requirement.
- 1.18 In order to assist the Contractor, the Authorised Officer will maintain and notify the Contractor of 'hot spots'. 'Hot spots' are locations where, for any reason, there is a high level of public complaints or the Authorised Officer is aware of persistent problems. When carrying out a Service at these locations the Contractor shall pay particular attention to the standard of work and confirm in the Completion Report for that day's work that the Service at each 'hot spot' has been completed to the Contract Standard.
- 1.19 Where appropriate the Contractor is encouraged to take photographs of work after completion, in particular, of 'hot spots', after each maintenance visit, in all cases to confirm that the area/s are being maintained to the Contract standards. Photographs, which may be of 'traditional' format or may be in the form of digital images, may be included with the daily reports on works completed.
- 1.20 The Authorised Officer will designate monitors to carry out checks on all of the Services to confirm that the Services are completed in accordance with the Contract Standard and to confirm that the Contractor is properly and effectively monitoring his own performance. The Contractor shall note that in the case of tree works, and associated works, ALL works, and not just a sample, shall be inspected. The monitors shall be provided with suitable digital camera equipment and they shall photograph sites, and works, checked for inclusion with reports on the standards of maintenance achieved at sites. Schedule 9 (Control Procedures) provides further information on 'hot spots', overall standards, self-monitoring and monitoring by the Authorised Officer.
- 1.21 The Contractor's attention is drawn to Condition 35 and he should note that any omission or deficiency in the performance of the Services as set out in the Conditions and in the Specification will be dealt with pursuant to that Condition and to Schedule 9. The Authorised Officer's inspections of works, referred to in paragraph 1.20, will also check that the Services are being carried out to the Contract Standard. When the Contractor is found not to have performed to the required standard the sum due for the task/s in question shall be certified as a monetary deduction under Condition 11.
- 1.22 Emergency Services. The Contractor shall note that urgent responses regarded as arboricultural emergencies are specifically dealt with in Section 3.4 of the Specification.
- 1.23 Access to Sites. The Contractor shall note that many of the roads in the Borough are subject to parking and waiting restrictions including "Red Route" restrictions, Local Controlled Parking Zones and Bus Priority Routes. The Contractor must take account of the various restrictions when organising his Works Programmes and he should not presume that restrictions do not apply to his operations.

- 1.24 The Contractor should also note that access to some sites is restricted preventing the use of larger plant and machinery. It is the responsibility of the Contractor to ensure that he is aware of all access problems and so account for these when preparing his Work Programmes and when pricing the Bills of Quantities. No claims will be admitted on the basis that access is inadequate or other site constraints exist.
- 1.25 A number of sites may require access via bollards, barriers, gates or similar that are kept locked shut. The Contractor shall be issued with keys to facilitate access into these areas and he will therefore be responsible for the replacement of keys lost by him and for the replacement of locks (with new keys) that results from his loss of the keys. The Contractor should be aware that additional access restrictions arising from continuing parks improvements will be put in place at parks and open spaces from time to time during the Contract. There shall be no additional payments to the Contractor in respect of such further access restrictions.
- 1.26 The Contractor shall note that access to sites for plant and machinery is restricted to that plant/machinery that is required and actively employed in the maintenance operations in progress at the site, generally meaning mowing, sweeping, other ground works and the delivery/collection of equipment and waste. Failure to observe this requirement shall be treated as a failure to carry out the task in progress in full accordance with this Specification and dealt with in accordance with Condition 35.
- 1.27 At locked sites the Contractor shall ensure that the access “device” is kept locked at all times except when in the process of entering/exiting the site. This requirement pertains whether the “device” was locked shut on his employee’s arrival at the site or not. Failure to observe this requirement shall be treated as a failure to carry out the task in progress in accordance with Condition 35 and Schedule 9.
- 1.28 The Contractor shall arrange for all possible means of pedestrian and (authorised) vehicular access to be maintained for residents, visitors and the public in general during works in progress at sites. The Contractor’s Method Statements shall clearly identify all measures to be taken to ensure that the Service area carried out in such ways as to cause the minimum of inconvenience and disruption to the general public.
- 1.29 The Contractor’s attention is drawn to the particular arrangements for access in respect of tree works at certain sites that are set out in Section 15 of the Specification.
- 1.30 The Council is committed to increasing the quantity of green waste arisings that are recycled for further use. To this end the Contractor shall provide details, in its Method Statement, of its proposals towards achieving these green waste recycling objectives.

2 TREE MAINTENANCE: INTRODUCTION AND GENERAL REQUIREMENTS

2.1 The Contractor should be aware that the Parks Service has recently started a programme to develop Management Plans for all of the Parks Commons and Open Spaces in the Borough. The Contractor should also be aware that Management Plans already exist for some of the sites. All such plans do, or will, cover all aspects of the future improvement and development of the sites. Existing and future plans have been/will be developed in consultation with local residents, user groups and other interested parties, including the maintenance contractors. Where such plans affect the conduct of horticultural maintenance and other work, whether specified in this Contract, or not, the Contractor shall follow detailed guidance issued by the Authorised Officer.

2.2 THE APPLICATION OF CHEMICALS

2.2.1 The Council, as part of its commitment to safeguarding the environment, is seeking to reduce the amount of chemical treatments used in horticultural operations and the Contractor will be expected to be sensitive to this aim. Unless otherwise specified therefore all weed removal will be performed by manual rather than chemical treatments and other treatments, e.g. fungicides, herbicides and pesticides must be used strictly in accordance with the manufacturer's and the Authorised Officer's instructions, and only on specified areas. In general no chemical treatments will be allowed in Ecological Areas.

2.2.2 The Contractor shall comply with the Food and Environment Protection Act 1985 (The Act), the Control of Pesticides Regulations Act 1986, the Health and Safety at Work etc. Act 1974, and the Control of Substances Hazardous to Health Regulations 2002 relating to the application of pesticides and the storage and disposal of chemicals, and must supply proof of certification of all employees engaged in the application and handling of chemicals and training under the Food and Environmental Protection Act 1985 (Part 3) ("The Act").

2.2.3 For the purpose of chemical application the Contractor shall only use equipment contained within the list given below:

- Knapsack sprayer
- Controlled droplet applicator
- Mechanical distributor
- Hand-held distributor

2.2.4 All methods of application shall be approved as appropriate to the particular task by the Authorised Officer prior to commencement of work. All chemicals shall be applied in accordance with the manufacturer's instructions and recommended rates of application.

2.2.5 The Contractor shall ensure that any equipment used for the application of chemicals is kept in good and serviceable condition at all times, being free from leaks, damage etc. and properly adjusted at all times.

2.2.6 Any chemicals delivered to any site must be stored in a manner which conforms to the appropriate legislation and must be applied as soon as is practicable after delivery.

2.2.7 All operatives engaged in undertaking the application of any "pesticide" as defined within the terms of the Act shall be at least 18 years of age, and shall hold a certificate from a training establishment recognised by the Minister of Agriculture Fisheries and

Good as being an approved assessment centre under the terms of the Act. Prior to the commencement of the Contract the Contractor shall present to the Authorised Officer proof that employees to be engaged in such works are suitably qualified and assessed and shall ensure that only those operatives are engaged in the application of such materials. Where known at the time of writing this information is to be included in the Method Statements, Schedule 6. Further detailed information that becomes available prior to the commencement of the Contract shall be included in the Contractor's Method Statement and, as such, form a part of this Contract. The Contractor shall ensure that any operative actively undertaking the application of any "pesticide" as defined within the terms of the Act shall have, on his person, the appropriate certificate which he shall show on request by an authorised officer or inspector.

2.2.8 The Contractor shall provide his staff with all protective clothing applicable to the materials being applied at any one time, and shall give his staff access to such washing and cleaning facilities as are required under the Act. The Contractor shall ensure that his staff while engaged in the application of such materials wear such protective clothing as is required and that they observe all safety precautions as required. The Contractor shall ensure that his operatives have access to all facilities required under the Act for the proper mixing of chemicals, disposal of unused chemical mixes, and the proper cleaning of all clothing and equipment used after application.

2.2.9 The Contractor shall ensure that all appropriate warning signs as required by the Act and by the Authorised Officer are in place and clearly visible at any area where chemical application is to be carried out, in progress and for the appropriate time after completion of the works. For the purposes of monitoring these works the Authorised Officer shall from time to time provide the Contractor with approved dyes that the Contractor shall be expected to incorporate into chemical mixes to be applied at specified sites.

2.2 The Contractor shall take account of all the foregoing detailed requirements when pricing the Bills of Quantities.

2.3 HAZARDOUS WASTE

2.3.1 The Contractor will be aware that the Government has implemented the EC Hazardous Waste Directive by means of the Hazardous Waste (England and Wales) Regulations 2005 (SI 2005/894) (The Regulations) and, in the Act, the term Hazardous Waste has replaced "Special Waste". The List of Wastes (England) Regulations 2005 (SI 2005/895) details all Hazardous Wastes.

2.3.2 The significant change is that, in general, Special Waste always required careful handling if it was to be collected and transported safely as it was hazardous to persons. Hazardous Waste poses a threat to the environment and only a proportion has the same characteristics as Special Waste. Many items can be handled without special PPE and transported on normal vehicles. Others, once identified, only require limited PPE or handling methods, which can be pre-specified. Indeed, many, when in small quantities are not treated as hazardous if they are collected as part of mixed municipal waste.

2.3.3 The Contractor will encounter Hazardous Waste in the course of the Contract. However, most will be comparatively innocuous items such as TVs, light tubes, etc. All the Contractor's staff must be trained to identify Hazardous Waste which requires special handling and that which does not require special handling. They must know the appropriate procedures to ensure their and public safety.

- 2.3.4 Hazardous Waste found during the course of the Contract Period will have been deposited in contravention of Section 33 of the Act. As such, no prior notification is required before moving such Hazardous Waste.
- a) The Authorised Officer will provide the Contractor with details of the materials considered to be “Waste Not Requiring Specified Handling or PPE and those materials considered to be Waste Requiring Specified Handling or PPE. This will enable the Contractor’s staff to properly report any waste found during the course of their operations
- 2.3.5 Waste Requiring Special Handling and PPE. Should the Contractor’s staff be suspicious about any item they may find in the course of the duties and suspect that it may be Hazardous Waste, requiring special handling and PPE, then the following procedure must be adopted. Staff must immediately:
- a) contact their Arboricultural Manager, or his deputy, who is to attend on site as soon as possible and ensure that actions are taken to minimise the possibility of harm to any person; and
- b) contact the duty Waste Management Officer or any other Waste Management Officer. The contact telephone numbers are contained in Schedule 7 and shall be notified to all staff. A Waste Management Officer will attend on site as soon as possible and ensure that actions are taken to minimise the possibility of harm to any person; and
- c) remain on site to safeguard the public from the Hazardous Waste until satisfactory alternative arrangements are made by a Waste Management Officer to safeguard the site. The London Fire Brigade should be called (999 call) if it is believed that the site cannot be adequately safeguarded to avoid harm to the public.
- d) The Waste Management Officer or the Authorised Officer shall decide how the waste can be safely handled and delivered to WRWA for disposal taking advice from the Environment Agency or the London Fire Brigade as needed. Should a safe method not be identified, then the waste is to be reported to the Council’s Emergency Services and the procedures in paragraph 2.3.5 (c) of this Specification shall be followed.
- 2.3.6 Where there is actual spillage of chemicals then the Council has an existing procedure that must be followed and the Contractor must call the Council’s Emergency Services on (020) 8871 6900 as well as a Waste Management Officer. Thereafter, the Contractor shall carry out the reasonable instruction of a Waste Management Officer, the Environment Agency, the London Fire Service or the Council’s Emergency Services for the final collection and disposal of the waste and include full details of the collection and disposal in the next Completion Report, with times, names, contact details, etc. Where considered to be appropriate, the Authorised Officer will pay for the above actions as Unspecified Work.
- 2.4 RECYCLING
- 2.4.1 The Contractor shall be deemed to have included in his prices for all waste disposal resulting from his operations including for the local recycling of all green waste arisings and for the recycling, as appropriate, of other non green waste arisings

2.5 WORKING IN ECOLOGICAL AREAS

- 2.5.1 From time to time the contractor shall be required to carry out tree maintenance works in designated ecological areas. These ecological areas are situated within a number of the Commons, Parks and Cemeteries contained in this Contract.
- 2.5.2 The Council employs a full time Biodiversity Manager (Principal Parks Officer (Biodiversity)) and a full time Parks Officer (Biodiversity). The Contractor shall be expected to liaise closely with these officers and to adhere to any specific instructions provided by them in relation to works carried out in the designated ecological areas. The contractor will be provided with appropriate and detailed information and instructions as and when the need arises.
- 2.5.3 All tree maintenance tasks required at Ecological areas shall at all times be carried out in the manner and at the times specified by the Authorised Officer. Failures, by the Contractor, in either the timing or the method of operations may seriously jeopardise the development of the areas causing permanent or temporary loss, or damage, to individual species of flora and fauna. This being so, any failures by the Contractor, whether by his acts, omissions or negligence when working at or adjacent to Ecological Areas shall be considered as serious failures and dealt with in accordance with Condition 35 and Schedule 9.
- 2.5.4 The Contractor shall note, that due to the sensitive nature of the Ecological Areas, access for his plant shall be restricted to only that plant which is required and actively employed on the operation in progress. Generally this shall mean only such plant as is needed directly for tree maintenance or for the collection and carting away of arisings.
- 2.5.5 The Contractor shall note that the use of chemical treatments at Ecological Areas is to be avoided wherever possible. In the cases where the Authorised Officer specifies the use of certain chemical treatments for certain tasks, the Contractor shall fully observe the provisions specified by the Council from time to time.

3 TREE MAINTENANCE - Specific Works

3.1 GENERAL SPECIFICATION

3.1.1 OVERVIEW

3.1.1.1 The Council owns or manages a wide portfolio of property. Much of this property has trees growing upon it. Amongst other things, this property comprises parks, open spaces, common land, housing estates, terraced property, pavements and verges adjacent to highways, schools, cemeteries and burial grounds and social services property. At the present time the trees, excluding woodland, under the Council's management are estimated to number approximately 75,000. Approximately 55,000 trees are recorded in the Council's database.

3.1.1.2 For information and guidance purposes only, the approximate distribution of these sites is as follows: 900 different streets or highways sites, 600 housing sites (ie estates or other housing properties, including individual houses), 65 parks, commons and open spaces, 5 cemeteries or burial grounds plus a wide diversity of other sites.

Nearly all these sites are within the Borough boundary. Less than 0.05% of the sites are outside the Borough.

- 3.1.1.3 In order to fulfil its responsibilities as a land-owner, and to ensure that Borough residents may enjoy the benefits of a pleasant and healthy environment, the Council has a continuous programme of tree inspection and maintenance to ensure that trees are safe, healthy and do not cause undue problems to persons or property.
- 3.1.1.4 The cycle of inspection is such that each tree determined as growing in the public highway receives a full inspection every second year. All other trees receive a full inspection every third year. At the time of inspection any works deemed necessary are specified for individual trees.
- 3.1.1.5 Trees are also inspected on an ad-hoc basis as a result of enquiries from members of the public, Councillors and Council officers and outside agencies. Any work deemed necessary as a result of such inspections is commissioned.
- 3.1.1.6 Works shall be commissioned with the Contractor in four categories.
- 3.1.1.7 Routine Works. These are works arising from the regular cyclic inspection regime. Works are collated into blocks for completion to ensure that trees in a particular location are completed at the same time. Typically this could be all those trees on a single large housing estate, several small estates, a park, or a group of adjacent streets. For example, Highways trees are grouped into a total of 18 blocks ranging from 300 to 1300 trees in each, with between 250 and 1100 requiring work at any one time. Tree on other sites will normally be collated into and issued as blocks at the lower end of this range. Routine works will be issued in a continuous series of blocks as inspections are completed. The specified timescale for completion of blocks of routine works will normally range from 6 to 12 weeks depending upon the volume of work.
- 3.1.1.8 Emergency Works. These are works which require immediate or urgent completion and will be issued to the Contractor on an ad-hoc basis. Section 3.4 of the Specification provides full detail of the Emergency provisions of the Contract. The Contractor is required to have a 24/7 service available for these Emergency Works, and the Contractor has priced an Emergency Services retainer accordingly.
- 3.1.1.9 Minor Ad-hoc Works. These are tree maintenance tasks which arise from time to time as a result of ad hoc inspections. They are works that are not so urgent as to merit being regarded as an emergency under the provisions of this Contract, but which cannot reasonably wait for the next scheduled routine maintenance visit to that particular site. Minor works are generally of a modest nature. Minor Works will be collated into schedules that will be issued to the Contractor once each week with a two week timescale for completion. Section 3.3 of the Specification provides full detail of the Minor Works provisions of the Contract.
- 3.1.1.10 Occasional Works. These are works arising as a result of ad hoc inspections or other ad hoc requirements. They will be issued as individual packages of works as they arise. Timescales for completion will be discussed and agreed between the Contractor and the Authorised Officer.
- 3.1.1.11 The Contractor shall ensure that the tendered prices in the Bill of Quantities reflect his capability to undertake such volume of works and shall further ensure that

staffing levels are adequate in order to complete the volume of works as indicated in the Bills of Quantities.

3.1.2 TREE SIZES

3.1.2.1 Trees shall be categorized in four size classes which shall be based on stem diameter at breast height (dbh) as this is considered to give a better indication of overall tree size and maturity than do other measurements such as tree height. The contractor shall note the description of dbh at 3.1.6 (Definitions). Categories shall be as follows;

- a) Small (Size Code S) Stem of diameter up to 15cm dbh
- b) Medium (Size Code M) Stem of diameter 16cm - 25cm dbh
- c) Large (Size Code L) Stem of diameter 26cm - 40cm dbh
- d) Very Large (Size Code VL) Stem of diameter over 40cm dbh

3.1.2.2 Within the specification, trees within the Small category may be referred to as saplings. The term sapling shall apply to young trees showing juvenile characteristics and which are not exceeding 7.5cm (3") dbh or 22.5cm (9") girth.

3.1.2.3 If the Contractor disagrees with or disputes the Size Category into which any tree has been allocated he shall notify the Authorised Officer prior to commencing works on that tree. If the Contractor commences work he shall be deemed to have accepted the Size Category into which it has been allocated.

3.1.3 SITE CATEGORY

3.1.3.1 Trees will be allocated to a site category in order to reflect the perceived difficulty in maintenance of trees growing in such location. The unit price of tasks will be adjusted by an appropriate price factor applicable to the Site Category if such price factors have been tendered by the contractor in the Bills of Quantities T2. Site Categories will be as follows;

- a) Highways Site. A tree will be regarded as growing in a Highways Site where it is growing within a footpath, grass verge, traffic island or on other land designated as adopted public highway. Trees growing in paved areas, footways and adjacent to driveways and parking areas within the boundaries of Council housing estates are not regarded as growing in Highways Sites and shall be regarded as growing in Open Sites. Trees which overhang land considered to be public highway but which are growing in land adjacent to the highway are not growing in Highways Sites.
- b) Open Sites. A tree will be regarded as growing in an Open Site where there is clear open space around the tree or there is unrestricted access to the tree and vehicles and equipment can be used unimpeded close to the work area. Examples of such areas would be parks and open spaces, housing estates, large communal gardens or individual gardens fronting on to a road.
- c) Remote Site. A tree will be regarded as growing in a Remote Site where the transport of tools to and from the work area and the removal of arisings is

impeded by narrow access, high fences and or distances of more than 25m from the nearest vehicle access point. Examples of such sites would be small communal gardens or sites where vehicle access is not permitted (or desirable). A site will not normally be deemed remote if access within 25m can be reached with reasonable effort which may include the use of narrow bed vehicles capable of using narrow access routes.

- d) **Confined Site.** A tree will be regarded as growing in a Confined Site if there are significant, numerous, fragile, or valuable structures or objects in the work area which require specific additional care in respect of working practices. Structures such as housing property, garages, sheds, fences etc do not in themselves constitute a significant, fragile or valuable object or structure since normal competent arboricultural practice should suffice in this respect. Examples of such sites could include small rear gardens, and cemeteries.

3.1.3.2 If the Contractor disagrees with or disputes the Site Category into which any tree has been allocated he shall notify the Authorised Officer prior to commencing works on that tree. If the Contractor commences work he shall be deemed to have accepted the Site Category into which it has been allocated.

3.1.4 UNSPECIFIED WORKS

3.1.4.1 When tree maintenance works are specified and there is no specific rate in the Bill of Quantities for works so specified then the works shall be carried out at the Unscheduled Hourly Rate in Bill of Quantities 10-3.

3.1.4.2 Works specified under the Unscheduled Hourly Rate will be given a time allocation by the Authorised Officer. Time allocations shall be multiples of 30 minutes. If the Contractor commences work on an item so specified he shall be deemed to have accepted the time allocation and the consequent price value for the task. If the Contractor disagrees with the time allocation for a specific task he shall notify the Authorised Officer prior to commencing work on that specific item. The Authorised Officer and the Contractor shall then agree a time allocation for the task or the task shall be cancelled.

3.1.5 DEFINITIONS

ARISINGS	Foliage, branches, chippings, logs and timber generated as a result of tree works commissioned under this contract.
BASE	The lower region of the trunk.
BASAL GROWTH	Epicormic or adventitious, usually vigorous, growth arising from or adjacent to the base of a tree.
BRANCH BARK RIDGE.	A normally obvious ridge of bark that protrudes at the top of a branch union and then continues downwards at an angle defining the separation of the two.
BRANCH.	A secondary woody stem or limb growing from the trunk or main stem of the tree or from another secondary limb.
BRANCH COLLAR	A bulge formed at the base of a branch by the annual production of overlapping layers of branch and stem or major branch tissue.

BRANCH UNION	The join between two branches, or between a branch and a larger stem.
BUTTRESS ROOT	A large woody root extending from the trunk into the soil forming the root flair and which usually plays a major role regarding tree stability.
CALLOUS TISSUE	Wood formed from cells produced after injury to living tissue expanding from ribs or rolls around the wound.
CAMBIUM	The layer of actively dividing cells between the inner bark layer and heartwood.
CANOPY HEIGHT	The height distance between the lowest branches and the top of the tree. Canopy height is used as the basis for the percentage of crown reduction and differs from the overall tree height in that it does not include the length of clear stem or “ground clearance”.
CAVITY	A hole in a tree formed by decay or damage from whatever cause.
COPPICING	The removal of all growth, or regrowth from a regular pruning point, usually at ground level.
CRANE	access vehicle used for either transporting operative to elevated work area or for lifting sawn timber away from operative and working area
CROWN	The aerial parts of tree comprising of , foliage , branches and limbs and other growth originating from the trunk.
CROWN BREAK	An identifiable point above which the crown forms.
CROWN HEIGHT	The point where the crown begins usually indicated by the first fork in the main trunk.
CROWN LIFTING	An operation to remove lower branches so as to increase the distance between the lowest branches and the ground.
CROWN THINNING	An operation to remove a percentage of the branches so as to achieve a reduction in the crown's density whilst retaining its overall dimensions.
CROWN REDUCING.	An operation to reduce the overall dimensions of a tree canopy without unduly affecting the canopy density or the general shape of the tree's outline.
CROWN SHAPING	An operation to remove or reduce a specific portion or portions of a tree canopy in order to effect an alteration of the outline appearance of the tree.
DBH	Diameter at breast height. The diameter of the tree stem measured at a height of 1.5m above ground level. If the tree has divided into more than one stem at this height the dbh shall be taken to be the point of narrowest diameter below the division. If the tree is a single stem with an unusual growth pattern giving rise to abnormality, then the dbh shall again be taken to be the narrowest diameter below the abnormal growth.
DECAY	Process of timber breakdown possibly caused by invading pathogen or exposure to air or light which may require further investigation.
DISMANTLE	The process of felling a tree in sections which may involve the removal of cut material using a lowering rope system.
EPICORMIC SHOOT	(SUCKERS). A shoot originating from a dormant or adventitious bud on a main stem or branch.

FELLING	The complete removal of a tree but not including the removal of any below ground parts.
FINAL PRUNING CUT	A single cut, or the last of a series of cuts, which completes the removal of a limb or branch.
FLUSH CUTTING	The method of removing a branch so close to the parent branch or stem which damages or removes the branch collar.
FORMATIVE PRUNING	Pruning carried early in a tree's life in order to achieve a structure that is mechanically sound and free from potentially hazardous features.
FULL STAKE	A tree support which is sufficiently long to be driven firmly into the ground and have a tie at its top end which supports a young tree just below crown break.
GRINDING	The removal of the stump and roots of a tree by specialized chipping equipment or other mechanical reduction of the woody parts.
GROUNDSTAFF	An operative skilled, qualified and experienced in all elements of practical arboricultural works undertaken on the ground.
GROWTH	All tissue whether live or dead which forms a tree.
GRUBBING	The removal of the stump and roots of a tree by digging.
HALF STAKE	A tree support which is sufficiently long to be driven firmly into the ground and have a tie at its top end which supports a tree at 1m above ground level.
HOGGIN	granular sub-base material (usually crushed rock) that is self-binding used for temporary reinstatement of footways
LIMB	A branch, normally one of the larger components of the framework forming a tree's crown .
MEWP	common abbreviation for mobile elevated working platform – normally a self propelled platform of adjustable height from which operatives may undertake work tasks.
PARENT BRANCH	The larger branch or stem from which a smaller branch originates.
PEST or DISEASE	Any organism or virus that is causing or is likely to cause problems with the health of a tree.
POLLARD	A tree that has had all growth removed to a point on, or to points close to the main stem at a given height above ground level so that it may produce a dense growth of new shoots , which may or not be repeated on a regular cycle.
ROOT	Live tissue found below ground level, the purpose of which is to either supply nutrients to the crown or to provide stability.
SAPLING	Young tree typically less than 6m in height with stem circumference under 22.5cm (7.5dbh) which still exhibits juvenile characteristics.
SNAG	See “Stub” below.
STUB (SNAG)	A short section of branch protruding beyond the branch collar which may have resulted from die-back, damage, or pruning work not undertaken in accordance with best practice.
STAKING	An operation to affix a young tree to an upright post or posts for support.

STRAIGHT FELLING	The action of felling a whole tree in a single action by using a sink cut and back cut.
STUMP	The section of a tree's stem and roots which remain after felling and from which new growth is not intended to be retained.
TARGET PRUNING	The method of pruning where the final pruning cut is made adjacent to but without damaging or removing the branch collar. Such a pruning cut exposes the minimum surface area possible for the particular branch removed.
TREE	A perennial woody plant that commonly achieves a height of 5m or more as either a single or multiple-stemmed plant usually with a distinct crown.
TRUNK	The main stem of a tree that usually supports the crown / canopy.
TYING	An operation to affix a young tree to a supporting stake.
WOOD	The secondary xylem of trees beneath the bark which consists mainly of cellulose and lignin .
WOUND	An injury, however caused, to any part of the tree by any means including pruning.

3.1.16 SITE MANAGEMENT

3.1.6.1 The work shall be under the constant supervision of a competent supervisor provided by the Contractor and any directions given to such a supervisor shall be deemed to have been given to the Contractor.

3.1.6.2 The Contractor shall prevent any trespass on adjoining property by employees, equipment, materials or debris and arisings under his control and shall take all reasonable precautions to avoid creating a nuisance, inconvenience or disturbance from noise, smoke, dust, arisings, debris, fumes or any other element during the progress of works.

3.1.6.3 The Contractor shall display polite notices containing the names and contact telephone numbers of the Contractor and the Council at all times when undertaking works in any public area. All notices are to be approved in writing by the Authorised Officer before being used on site and shall be provided by the Contractor at his own expense.

3.1.6.4 The Contractor shall answer any query about the tree work being undertaken in an informative and helpful way. If the Contractor is unable to help with a particular query the person should be referred to the Authorised Officer. Assumptions made by the Contractor as to the reason why works are being undertaken must not be passed on to members of the public.

3.1.6.5 Council Officers' mobile telephone numbers are not to be given to members of the public unless specifically authorized by the Authorised Officer. The Contractor will be informed of which telephone numbers may be generally passed on.

3.1.7 WORKING ARRANGEMENTS

3.1.7.1 The normal working day shall commence at 07:00 and end at 18:00 Monday to Friday excluding Public Holidays.

- 3.1.7.2 Work may proceed outside the normal working day and at weekends or on Public Holidays only with the prior written agreement of the Authorised Officer. This provision shall not apply to emergency works.
- 3.1.7.3 Where work is to be carried out over or adjacent to roads the Contractor must make every attempt to arrange the works to avoid traffic congestion.
- 3.1.7.3 The Contractor shall provide and constantly maintain all warning and direction notices, cones and barriers when and where required for the safety and convenience of the public and road users. The Contractor shall comply with all and any legislation relating to working on or adjacent to roads and public highways.
- 3.1.7.4 In some areas of the Borough parked vehicles may obstruct the area of work. The Contractor shall if necessary make all arrangements for the suspension of parking and for the removal of obstructing vehicles through the appropriate channels within the Council. The costs of such arrangements shall be itemized and identified separately to any invoices for works completed.
- 3.1.7.5 On no account shall the Contractor move or remove parked vehicles himself and the Contractor shall be wholly liable for any damage or compensation payable to a third party in the event of such action. In submitting his price the Contractor shall make due allowance for undertaking works in areas where parked vehicles are prevalent.
- 3.1.7.6 Contractors may place “Advance Warning” signs requesting that drivers do not park in the work area with the agreement of the Authorised Officer. Such signs shall be a “request” and in no way indicate that parking is prohibited or suspended unless the formal procedures for suspending parking have been completed.
- 3.1.7.7 Any such signs must be clear and legible and state the date of the intended works as well as the Contractor’s name and contact details. Signs must not be attached to any tree by means that would cause injury or damage to it. Signs must be removed from any tree or location as soon as works are complete and in any case signs must not be displayed for more than 7 days.
- 3.1.8 PEDESTRIAN CONTROL
- 3.1.8.1 The Contractor shall provide, install and maintain such signs, barriers or other measures as are necessary to safely exclude members of the public from the work area. Such measures shall comply with any relevant legislation, codes of practice or guides to best practice.
- 3.1.9 NOISE
- 3.1.9.1 The Contractor shall take the greatest care and use appropriate equipment, working practices, and scheduling to ensure that noise levels are kept to a minimum at all times, having regard to nearby houses, flats and offices. Particular care should be made in respect of stump grinders and brushwood chippers, and wherever possible, stumps and brush should be processed in batches rather than continuously and the machinery turned off whilst not in use. In any case, noisy equipment shall not be used before 08:00 or after 17:00 Monday to Saturday and not at all on Sundays or Public Holidays unless with the prior written agreement of the Authorised Officer or as a consequence of an emergency works instruction issued by the Authorised

Officer.

3.1.10 DAMAGE

3.1.10.1 The Contractor shall take all reasonable precautions to avoid damage to any property on or beyond the work area and shall provide all necessary covering and protection.

3.1.10.2 The Contractor shall inform the Authorised Officer as soon as possible of any loss or damage during the works arising from theft or malicious behaviour.

3.1.10.3 The Contractor shall notify the Authorised Officer immediately if any accidental damage to property is caused during the works or services.

3.1.10.4 The Contractor shall take every care not to damage other trees, grass, shrubs, other plant material, gates, fences and other landscape features in the vicinity of the work area. The reinstatement, repair, or remedial work necessary as a result of such damage shall be at the Contractors expense and shall be to the satisfaction of the Authorised Officer.

3.1.10.5 The Council reserves the right to make alternative arrangements for the rectification of damage, the cost of which shall be borne by the Contractor.

3.1.11 DISPOSAL OF TIMBER, BRUSHWOOD AND ARISING

3.1.11.1 All timber, brushwood, chippings or other arisings resulting from the works shall become the property of the Contractor unless otherwise stated in the Schedule. The Contractor shall be responsible for making its own arrangements for the disposal of all arisings which must be removed from site by the Contractor as the work proceeds.

3.1.11.2 All sites are to be left clean, tidy and safe, to the satisfaction of the Authorised Officer. On no account will timber, brushwood or arisings be left on site overnight or burnt within the Borough boundaries.

3.1.12 PUBLIC UTILITIES AND STATUTORY UNDERTAKERS

3.1.12.1 The Contractor shall at his own expense take the necessary measures to ascertain from the various statutory authorities the position of services which may be affected by, or have an effect upon, any works.

3.1.12.2 The Contractor shall take all necessary measures to prevent accidental damage to underground or overhead services and plant and in this respect shall pay particular attention to any operation which involves excavation or the driving in of tree stakes.

3.1.12.3 The Contractor shall at his own expense make all arrangements with the responsible body for the temporary diversion or disconnection and subsequent reconnection of overhead or underground services, and shall bear the cost of any necessary remedial or reconnection works which arise from damage caused by work under his control.

3.1.13 PERSONNEL

3.1.13.1 The Contractor shall at all times ensure that the number of climbing arborists and groundstaff present on site is commensurate with the task to be undertaken. For any

operation, a minimum of two staff shall be present on site. For any operation where climbing work is being undertaken a minimum of two staff capable of effecting aerial rescue must be present on site in order that a rescue of either one may be effected by the other should the need arise.. Climbing operations shall not take place without groundstaff support..

3.1.13.2 All personnel shall be trained, competent and experienced to the task to which they are delegated, see Condition 15.3 of the Contract. The minimum competencies for all staff undertaking arboricultural works shall be the National Proficiency Training Council (NPTC) Certificates of Competence. Staff carrying out any arboricultural task shall be trained and certificated to at least the standard of the relevant module within the NPTC scheme regardless of whether the module is classified as Mandatory or Optional within the NPTC Scheme. Details of the certificates are indicated in Schedule 23. Copies of the certificates shall be provided to the Authorised Officer prior to any member of staff carrying the duties to which the certificate applies.

3.1.14 TOOLS AND EQUIPMENT

3.1.14.1 The Contractor shall provide all tools and equipment required for the execution of the works. All cutting tools shall be maintained in a sharp condition in accordance with good practice and the manufacturer's recommendations. Any damage caused by the use of blunt tools shall be repaired by the Contractor at his own expense to the satisfaction of the Authorised Officer.

3.1.14.2 Chainsaws shall be used judiciously and any damage caused by the careless use, or overuse, of chainsaws shall be repaired by the Contractor at his own expense to the satisfaction of the Authorised Officer.

3.1.14.3 Climbing irons may be used in dead trees or in trees being felled to ground level. Climbing irons shall not be used in any other tree.

3.1.14.4 All tools and equipment shall be kept under the close supervision of the staff present on site. Equipment shall not be left unattended.

3.1.14.5 When not in use, all powered equipment shall be switched off.

3.1.15 AERIAL RESCUE AND FIRST AID

3.1.15.1 At least one person working on the ground in any arboricultural team shall be competent skilled and experienced in performing an aerial rescue as detailed in Arboriculture and Forestry Advisory Group Leaflet No.402 and any revisions or replacements thereof. The person shall have been trained to at least the standard of NPTC ACTR02 Certificate of Competence to Climb Trees & Perform Aerial Rescue.

3.1.15.2 At least two persons working in any arboricultural team shall be competent skilled and qualified first aiders holding a current first aid at work certificate approved by the Health and Safety Executive.

3.1.15.3 Each arboricultural team shall have a first aid kit with them at all times. The first aid kit shall contain sufficient and appropriate supplies consistent with the arboricultural tasks being performed. In accordance with the guidance of the Arboriculture and

Forestry Advisory Group leaflet AFAG802 it is further recommended that each chainsaw operator carries their own personal first aid kit.

3.1.16 ACCESS TO PRIVATE GARDENS

3.1.16.1 The Contractor shall make his own arrangements with a resident or tenant to gain access when works have been specified to take place in such a person's own individual garden.

3.1.16.2 The Contractor shall give advance notice to tenants or residents when such work is specified and shall make arrangements for a mutually convenient time for the works to take place. The Council will normally provide the name and contact details of the appropriate person. If the tenant or resident cannot be contacted by telephone then the Contractor shall leave a letter at the property at least three days prior to the desired date of carrying out the works. On no account shall the Contractor or his operatives enter or work within a tenant's or resident's garden without the prior knowledge and approval of that person.

3.1.16.3 The Contractor shall inform the Authorised Officer if a resident or tenant refuses to allow access where works have been so specified by the Authorised Officer. In such cases, the Authorised Officer will make the necessary arrangements for access.

3.1.17 DEFECTS, DISEASES AND PESTS IN TREES

3.1.17.1 If during the progress of work on any tree the Contractor identifies a defect or damage which he believes has not been taken into account by the specification of work he shall inform the Authorised Officer.

3.1.17.2 The Contractor shall report the presence of any significantly defective, dangerous or damaged trees seen whilst travelling or working in the Contract area. If in the opinion of the Contractor the defect or damage represents an immediate hazard he shall inform the Authorised Officer immediately.

3.1.17.3 The Contractor shall report the presence of any significant tree pest seen whilst travelling or working in the Contract area. An example of such would be the Brown-tail Moth caterpillar.

3.1.18 WILDLIFE AND NATURE CONSERVATION

3.1.18.1 The Contractor shall ensure that all trees are inspected for the presence of bats and bat roosts prior to works being carried out. If any bats or bat roosts are discovered during such an inspection the Contractor shall notify both Natural England and the Authorised Officer and follow their advice.

3.1.18.2 If work has already commenced when the presence of bats or their roosts are detected the Contractor shall cease work immediately. If the Contractor considers that the tree is in an imminently hazardous condition he shall remain on site and immediately notify the Authorised Officer and seek advice. In any case the Contractor shall notify Natural England and the Authorised Officer as soon as possible and follow their advice.

3.1.18.3 The Contractor shall inspect all trees prior to commencing work to determine whether or not there are birds nesting in the tree. The Contractor shall take care with

regard to the possibility of birds nesting within cavities in the tree and to differentiate between active and abandoned nests. Nesting shall be taken to mean that birds are building nests, laying or hatching eggs, or rearing young to the point of fledglings leaving the nest.

3.1.18.4 If birds are found to be nesting within a tree the Contractor shall not commence work or if work has already commenced he shall cease immediately and notify the Authorised Officer. If the Contractor considers that the tree is in an imminently hazardous condition he shall remain on site and immediately notify the Authorised Officer and seek advice.

3.1.18.5 The Contractor shall inspect a site for the presence of stag beetles or their larvae prior to commencing work in particular if the specified work entails stump removal. If any indication of stag beetles or their larvae is found the Contractor shall not commence work and shall notify the Authorised Officer and seek advice.

3.1.18.6 The Contractor shall be aware of the provisions of up-to-date legislation with regard to wildlife, biodiversity and the natural environment, and the possible consequences of breaches of such legislation.

3.1.19 TREE MAINTENANCE WORK IN CEMETERIES

3.1.19.1 The Contractor shall note that Cemeteries are in general quiet, tranquil, places where relations and friends of the deceased pay their respects, in well-kept surroundings. Tree work by its nature is often a noisy dirty operation and for some works, large amounts of debris are unavoidable. It is important that the Contractor and his operatives are aware of the sensitive nature of these sites and act accordingly.

3.1.19.2 The Contractor shall notify the Authorised Officer of the intention to start works in a cemetery giving a specific time and date. Contractor's staff must report their presence at any of the cemeteries to the Bereavement Services Manager, the Registrar or his Deputy at the Central Cemeteries Office at Putney Vale Cemetery, prior to starting work.

3.1.19.3 The Contractor shall liaise with the Bereavement Services Manager and/or his staff at the Central Cemeteries Office prior to commencing works to clarify the following.

- a) Suitable areas for the Contractors vehicles for parking and for the collection of debris and arisings.
- b) Areas where vehicles or plant may not be used either on a permanent or temporary basis.

3.1.19.4 The Contractor shall liaise daily with the Bereavement Services Manager and/or his staff at the Central Cemeteries Office to ascertain whether or not there will be any ceremonies or services which will require the Contractor to temporarily stop work so that the service can proceed in a quiet and dignified manner.

3.1.19.5 The Contractor will be required to allow for the extensive use of lowering and guide ropes, to prevent damage to memorials, ground cover and fine turf area.

3.1.19.6 The Contractor will inspect the area around each tree prior to commencing work on it and shall draw to the attention of the Authorised Officer any damaged memorials,

ground cover or fine turf so that these are recorded before the work begins. It is accepted by the Council that some memorials are in poor repair, but Contractors should note that these are still to be treated with respect and should not be damaged further.

- 3.1.19.7 If, during the course of tree work, any memorial is damaged, the Contractor or his representative on site must report this fact to the Authorised Officer on the same day that the damage occurred.
- 3.1.19.8 The Contractor shall be fully responsible for the costs of any necessary repairs to memorials damaged as a result of their work. The Contractor shall not undertake or attempt any repair works to memorials. All repair work to memorials must be undertaken by a stonemason or monumental mason approved by the Authorised Officer.
- 3.1.19.9 The Contractor shall be aware that memorials and graves have considerably more than just a monetary value to the relatives and friends of the deceased. The Council will regard damage to memorials very seriously. Failure to report damage to memorials will also be treated seriously.
- 3.1.19.10 The Contractor shall be aware that graves with flowers or floral tributes are likely to be of high emotional significance to relatives or friends. The Contractor shall take every care to avoid damage to such flowers or tributes. The Contractor shall not move or remove flowers or floral tributes without the prior approval of the Authorised Officer.
- 3.1.19.11 The Contractor shall be aware that not all graves within a cemetery are marked by a memorial. All areas within a cemetery must be treated with the same respect as the more obvious burial areas. Unless otherwise informed by the Authorised Officer the Contractor must assume that all grass and lawn areas contain graves.
- 3.1.19.12 The Contractor shall be aware that visitors to cemeteries have usually come to pay their respects to deceased relatives and friends or to enjoy the peaceful surroundings. The Contractors staff shall be courteous at all times, and wherever possible, shall comply with any reasonable request made by persons in respect of graves. If the Contractor has any doubt regarding such a request he shall contact the Authorised Officer for advice.
- 3.1.20 **TREE MAINTENANCE WORK ON SCHOOL SITES**
- 3.1.20.1 Tree maintenance works are undertaken on schools sites where the school has a Service Agreement with the Council's Arboricultural Service to manage the school tree stock.
- 3.1.20.2 Before visiting or carrying out works on school sites the Contractor shall make an appointment with the appropriate manager or his designated representative for the site. This shall normally be the Head Teacher, the Premises Manager or School Secretary. The Contractor shall be advised of the appropriate person by the Authorised Officer. On arrival at a school site the Contractor shall report his presence to the designated person prior to proceeding to the work area.

- 3.1.20.3 Unless otherwise specified by the Authorised Officer or the Head Teacher, no works shall be undertaken on schools site during school opening hours. Works shall normally take place at weekends or during school holidays.
- 3.1.20.4 On no account shall any saws, tools, equipment or fuel be left unattended or unsecured on School sites.
- 3.1.21 **TREE MAINTENANCE WORKS ON SOCIAL SERVICES SITES**
- 3.1.21.1 Before visiting or carrying out works on Social Services sites the Contractor shall make an appointment with the appropriate manager of the site. The Contractor shall be advised of the appropriate person by the Authorised Officer. On arrival at a Social Services site the Contractor shall report his presence to the designated person prior to proceeding to the work area.
- 3.1.21.2 On no account shall any saws, tools, equipment or fuel be left unattended or unsecured on Social Services sites.

3.2 TECHNICAL SPECIFICATION

3.2.1 STANDARD AND SCOPE OF WORK

- 3.2.1.1 Without prejudice to any higher standard required by this Contract all works shall be carried out in accordance with British Standard 3998:1989, Arboriculture and Forestry Advisory Groups leaflets, current research directives and the current principles of good arboricultural practice and any subsequent revision or replacement thereof.
- 3.2.1.2 The Council is of the opinion that flush cutting is seriously detrimental to the health of trees and shall regard flush cutting or other deviation from target pruning techniques as a default in performance unless such work has been expressly specified by the Authorised Officer.
- 3.2.1.3 The operations required under this Contract shall include all aspects of tree maintenance including:
- Crown Thinning
 - Crown Reduction
 - Crown Lifting
 - Canopy Shortening
 - Pollarding
 - Formative pruning
 - Deadwooding
 - Removal of diseased or damaged branches
 - Removal of epicormic growth
 - Tree Felling
 - Stump Removal
 - Removal of saplings
 - Installation & removal of tree stakes and ties
 - Root pruning
 - Bark wound repair

Control of pests and diseases.

3.2.1.4 In respect of any individual tree the above tree maintenance operations shall be specified singly or in combination as identified in the Bills of Quantities. In the absence of a specific item in the Bill of Quantities the works will be issued as an Unscheduled item.

3.2.2 GENERAL PRINCIPLES OF PRUNING

3.2.2.1 Each tree is to be individually considered and the general description of the work to be done is to be interpreted in relation to the shape, size, character, condition and species of each tree. All operations shall be completed so as to leave each specimen with a pleasing and well-balanced appearance, compatible with safety

3.2.2.2 All pruning work shall be carried out by climbing arborists and groundstaff skilled, qualified and capable of interpreting the specification in relation to the specific tree and of assessing the correct amount of growth to remove as work proceeds.

3.2.2.3 When pruning is to be undertaken the Contractor shall not leave stubs or snags, and shall not cut into or beyond the branch collar. Final pruning cuts shall be made at and parallel to the branch collar or if this cannot be discerned, in a mirror image angle to the branch bark ridge. Flush cutting is not permitted.

3.2.2.4 The final pruning cut shall be completed carefully in one operation and shall leave a smooth surface with the minimum surface area exposed to the air commensurate with the size of the branch removed.

3.2.2.5 In cutting, dropping or lowering any material or arisings, care shall be taken not to damage, cut or otherwise rupture any other tissue of the tree.

3.2.2.6 All cutting tools shall be maintained in a sharp condition in accordance with good practice and the manufacturer's recommendations. Any damage caused by the use of blunt tools shall be repaired by the Contractor at his own expense to the satisfaction of the Authorised Officer.

3.2.2.7 Where there is an option of using any of chainsaw, pole chainsaw, pole saw or handsaw then a handsaw shall be used in preference.

3.2.2.8 At any time when a climbing operation is specified the Contractor shall at the same time remove any litter, debris or objects trapped or lodged in the tree canopy.

3.2.3 CROWN THINNING (Works Code T)

3.2.3.1 Crown thinning of trees shall be the lessening of foliar density by the removal of whole branches, sub-branches or small growths back to the main branch, limb or trunk resulting in a tree of natural appearance. The tree shall retain its original overall dimensions of height and spread.

3.2.3.2 For any tree for which crown thinning has been specified, the Contractor shall also at the same time remove all dead wood, broken branches and stubs or snags. The Contractor shall also make allowance for a modest shortening of specific branches if so specified. For example, an instruction may be so phrased to indicate that the thinning shall be completed in such a manner that a street light is unobstructed.

- 3.2.3.3 In addition, for any tree for which crown thinning has been specified, the Contractor shall also at the same time, if so specified, undertake crown lifting and remove basal growth and shall allow for this when pricing the bill of quantities.
- 3.2.3.4 Crown thinning shall normally be specified as the percentage reduction in canopy density and unless specifically indicated otherwise shall be 30%. In pricing the schedules the Contractor shall allow for the percentage to vary between 20% and 40% without alteration in price. Crown thinning above 40% shall be treated as an unscheduled item.
- 3.2.4 CROWN REDUCTION (Works Code C)
- 3.2.4.1 Crown reduction of trees shall be the reduction of the overall dimensions of the tree canopy by the judicious removal of whole branches, sub-branches or small growths back to a main branch, limb or trunk. This shall generally be achieved by removing the longer “half” of forked branches and not by cutting of the ends of branches. Within the constraints of undertaking such an operation, the tree shall retain its original canopy density.
- 3.2.4.2 For any tree for which crown reduction has been specified, the Contractor shall also at the same time remove all dead wood, broken branches and stubs or snags. The Contractor shall also make allowance for asymmetric reductions or for specific branches to be shortened if so specified. For example, an instruction may be so phrased to indicate that the reduction shall be completed in such a manner that property frontage is cleared by a particular amount.
- 3.2.4.3 In addition, for any tree for which crown reduction has been specified, the Contractor shall also at the same time, if so specified, undertake crown thinning, crown lifting and remove basal growth and shall allow for this when pricing the bill of quantities.
- 3.2.4.4 Crown reduction shall normally be specified as the percentage reduction in canopy height and spread and not of the overall height of the tree. Unless specifically indicated otherwise the percentage shall be 30%. In pricing the schedules the Contractor shall allow for the percentage reduction to vary between 20% and 50% without alteration in price. Crown reduction above 50% shall be treated as an unscheduled item.
- 3.2.5 DEAD WOODING (Works Code W)
- 3.2.5.1 Dead wooding shall be the removal from the canopy of the tree all branches which are dead or practically so. Dead wooding shall include the removal snapped or broken branches and stubs and snags. Dead wood shall be removed by careful target pruning and it shall not be removed by snapping or otherwise knocking the material from the tree. Works will only be specified using this works code when it is either the sole operation required or is not associated with a more substantial operation in sections 3.2.3 and 3.2.4..
- 3.2.6 CROWN LIFTING (Works Code L)
- 3.2.6.1 Crown Lifting shall be the removal of lower branches or sub-branches from the main stem or branch system up to a specified height or line the object being to increase the

distance between the ground and the lowest branches thereby allowing safe passage of pedestrians and traffic. Unless specified otherwise crown lifting shall be to crown height.

3.2.6.2 In addition, for any tree for which crown lifting has been specified, the Contractor shall also at the same time, if so specified, remove basal growth and shall allow for this when pricing the bill of quantities

3.2.7 REMOVAL OF BROKEN BRANCHES (Works Code B)

3.2.7.1 Removal of broken branches shall be the removal of one or more snapped or fractured branches by careful pruning at the nearest and most suitable point of growth or branch union which is unaffected by the fracture. Works will only be specified using this works code when it is either the sole operation required or is not associated with a more substantial operation in sections 3.2.4 to 3.2.5.

3.2.8 CANOPY SHORTENING (Works Code S)

3.2.8.1 Canopy Shortening is the asymmetric reduction of a specified branch or portion of the tree canopy to effect specified clearance between the edge of the tree canopy and an adjacent building or object. The general principals of crown reduction shall be applied but to a single branch or limited portion of the canopy. Works will only be specified using this works code when it is either the sole operation required or is not associated with a more substantial operation in sections 3.2.4 to 3.2.5..

3.2.8.2 Canopy shortening will normally be specified to give a clearance of between 2m and 5m between the outer edge of the tree canopy and the specified object. Such objects would normally but not exclusively be building frontages or gables, street lighting columns or CCTV cameras. The maximum clearance to be specified will be 5m. Branches so removed shall be cut at the most suitable point of growth or branch union which may be at a point further away from the object. However, branches shall not be cut further than is necessary to remove only those parts which extend beyond the specified limit.

3.2.9 REMOVAL OF EPICORMIC GROWTH (Works Code H)

3.2.9.1 The removal of epicormic growth shall comprise the removal of all epicormic or adventitious growth from the stem of the tree up to a specified height. It shall include the removal of epicormic and adventitious growth which arises from below ground buds and which emerges within the immediate area of the base of the tree. Growth shall be cut at a point as close to its origin in the cambium as is possible without causing damage to the cambium. Unless specified otherwise growth shall be removed to the height at which the stem divides to start the formation of the tree canopy. If ivy or other climbing plants are present, this operation shall also include to removal of such plants from ground level to a maximum height of 1m above ground level.

3.2.10 FORMATIVE PRUNING (Works Code P)

3.2.10.1 Formative pruning shall comprise the pruning of young trees to encourage future growth to form a balanced and well shaped crown. It shall comprise the removal of weak, crossing, rubbing and competing branches and shoots. It shall also include the shortening of over-vigorous extension growth as may be appropriate to individual

trees. All cuts shall be made at suitable branch unions or at suitable outward facing buds.

3.2.10.2 The Contractor shall exercise the greatest care when pruning all young or semi-mature trees. Secateurs will be used for the thinning, reshaping and retaining of individual trees. Attention shall be given to the future growth and development of such trees by the removal of competing leaders to ensure the development of one central leader where this is a characteristic of the species.

3.2.11 POLLARDING (Works Code A)

3.2.11.1 Pollarding shall be a complete crown removal by cutting the branch system at the original pollard point or, in the case of a previously unpollarded tree, at a point just above the break of the canopy to be specified by the Authorised Officer.

3.2.11.2 The original pollard point shall be regarded as the lowest point in the canopy where such an operation has been previously undertaken. The original pollard point must not be confused with crown reduction points in the upper canopy.

3.2.11.3 The operation of pollarding shall also include the removal of all epicormic growth.

3.2.11.4 The general principles of pruning and crown reduction shall apply unless the specific operation of pollarding so precludes.

3.2.12 TREE FELLING AND REMOVALS

3.2.12.1 Tree felling shall be the complete removal of a tree and may include the removal of the stump where so specified. The Contractor shall allow that "straight" felling will be unlikely in most circumstances and shall allow for dismantling of trees in sections using lifting and/or lowering equipment in order to remove it. Straight felling will be permissible where doing so will not cause damage to adjacent ground or property. If the Contractor believes that the condition of the tree which requires dismantling is such that it is too dangerous to climb he shall notify the Authorised Officer. Felling will be divided into the following categories;

- a) Fell to Ground Level (Works Code F1) which shall be the complete removal of the tree cutting the stump at, or as close as possible to the level of the surrounding ground surface.
- b) Fell and Grub (Works Code F2) which shall be the complete removal of the tree including the removal of the stump by grubbing. If works are specified using this code the stump must be grubbed out and removal by means of mechanical grinders will not be permitted. The provisions of paragraphs 3.2.13.(1-6) regarding stump removal shall apply.
- c) Fell and Grind (Works Code F3) which shall be the complete removal of the tree including the removal of the stump by grinding. Items issued using this works code will be those where the issuing officer believes a mechanical grinder to be necessary. The Contractor may opt to remove the stump by means of grubbing should he so choose. The provisions of paragraphs 3.2.13.(1-6) regarding stump removal shall apply.

- 3.2.12.2 The contractor shall take the greatest care in respect of correctly identifying trees which are to be felled. In any instance of an incorrect tree being felled, the Contractor shall immediately inform the Authorised Officer. The Contractor shall be required to then fell the correct tree, and shall bear the cost of replanting, and maintaining for one year, a replacement tree in a position as close to the original tree as possible. The replacement tree shall be of the same size as that felled, or in instances where this is not feasible, shall be of the largest size as is practically possible for the site. The Contractors attention is drawn to paragraph 3.4 of Schedule 22 of this Contract.
- 3.2.13 STUMP REMOVAL (Works Code F4)
- 3.2.13.1 Stump removal shall be the complete removal the tree stump and buttress roots to a depth of not less the 20cm below ground level. All stumps shall be removed by either grubbing or grinding. If grubbing has been specified then grinding will not be permissible. However, if grinding has been specified the Contractor may opt to grub the stump should he so choose.
- 3.2.13.2 Stump removal may be specified as an integral part of a tree felling operation as indicated in paragraph 3.2.12.1 (b) and (c) or may be specified as the removal of just a stump if the tree had been removed previously by other means. In this latter case the Works Code F4 shall apply.
- 3.2.13.3 For any tree or stump removed from a paved site and for which a replacement planting is intended, the arisings shall be removed, the site shall be backed filled with topsoil, firmly compacted and levelled with the surrounding surface and a tree stake inserted into the centre of the site unless the Authorised Officer has specifically instructed otherwise. The Contractor shall notify the Authorised Officer of completed sites as soon as possible thereafter. The Contractor shall be responsible for the safety and levelness of the site until such time as the Authorised Officer has been so notified. If the site is not intended to be replanted, the Authorised Officer will notify the contractor of this fact and the contractor shall then back fill the hole will hoggin instead of soil, and shall omit the stake.
- 3.2.13.4 For any tree or stump removed from a grass area or other soft landscaped site all arisings or chipping shall be removed to a depth of 20cm within the complete area disturbed by the removal of the stump. The hole shall be backfilled with good quality top soil which is to be firmed down sufficiently to prevent sinkage or pitting occurring. The contractor shall be responsible for topping up any sinkage greater than 50mm which occurs in the pit within three months of grinding taking place.
- 3.2.13.5 If the removal of the stump is specified as a combined operation with the removal of a tree and the removal of the stump is not to take place immediately after felling, then the tree stump shall not be cut lower than a minimum height of 1m until such time as removal does take place. Stumps shall not be left unattended at a height lower than 1m unless the site is made safe by the installation of the appropriate barriers and signs.
- 3.2.13.6 The Contractor shall at his own cost remove and replace any paving, tarmac, concrete or other material immediately necessary to facilitate the removal of a stump. The Contractor shall not be responsible for the permanent reinstatement or re-paving of the site.

3.2.14 REMOVAL AND REPLANTING OF SAPLINGS

3.2.14.1 Where instructed by the Authorised Officer the Contractor shall put upright and or replant specified saplings not exceeding a height of 6m. Such saplings will be generally but not exclusively those will have been pulled or knocked over exposing the rootball but which otherwise are not so badly damaged as to warrant their removal and disposal. The Contractor shall as necessary carefully lift the tree, excavate a sufficiently deep hole in which to replant it, replace the tree ensuring that the roots are at the correct depth and back-fill the hole. The tree shall be re-tied to a firmly anchored full length stake using two ties. New stakes and ties shall be used if the existing ones are broken or unusable or if the original stake was a half length stake.

3.2.14.2 Where instructed by the Authorised Officer the Contractor shall grub out and remove specified dead, vandalised, fallen or self sown saplings not exceeding a height of 6m or a stem circumference of 20cm. The Contractor shall, unless otherwise instructed, remove the whole tree and sufficient roots to enable replanting of a new sapling in the same site. The Contractor shall provide as necessary sufficient top soil to enable the hole to be back-filled and compacted so as to be level with the surrounding pavement or surface. In all cases where the tree pit is within a hard or paved surface a full length tree stake shall be firmly inserted in the centre of the tree pit. Stakes shall not be required in grass or other soft landscaped surfaces.

3.2.15 STAKING, TYING AND REMOVAL OF STAKES

3.2.15.1 Unless otherwise specified, all staking and tying shall be undertaken using a single tree stake for each tree. Tree stakes shall be specified as either a "Full Stake" or a "Half Stake" as follows:

- a) A Full Stake shall be sufficiently long so as to be driven firmly into the ground with the upper end at a height where a tree tie affixed 20mm from the top will support a tree just below the first bifurcation of the stem
- b) A Half Stake shall be sufficiently long so as to be driven firmly into the ground with the upper end at a height where a tree tie affixed 20mm from the top will support a tree at the higher of 1m above ground level, or at 1/3 of the tree's overall height.

3.2.15.2 The operation of re-staking a tree shall include the provision of a new stake of the appropriate size (full or half) and the disposal of the exist stake if present. The operation of re-tying a tree may utilise any existing stake but will require the provision of new ties.

3.2.15.3 Stakes shall be straight, sound, round in cross section and have a minimum top diameter of 75mm. They shall be of sufficient length for the purpose specified.

3.2.15.4 When instructed to insert a stake to support an existing tree the contractor shall take care not to damage the roots of the tree. If the stake is a replacement for one just or recently removed the stake shall be inserted into the same hole.

3.2.15.5 Stakes being inserted for the first time shall be placed on the kerb side of the tree for any tree growing in a footway adjacent to a road. For any other tree the stake shall be

inserted in the most suitable position, preferably on the windward side of the tree in relation to prevailing winds.

- 3.2.15.6 Trees shall be secured to the stake using the appropriate number of ties and spacers to the stake used. Two ties shall be used with a Full Stake where one tie is affixed 20mm from the top of the stake and the second shall be half way between the top tie and ground level. If the stem of the tree is bent or otherwise prevents the second tie being placed at the correct point, it shall be placed at the closest point above. One tie shall be used with a Half Stake and shall be affixed 20mm from the top of the stake.
- 3.2.15.7 Tree ties shall be made from rubber or plastic “strapping” and may be cut from a roll or be of the “buckle” type approved in advance by the Authorised Officer. They shall be of a minimum width of 38mm (1.5inches). Spacers shall be of rubber or plastic material and be of the size appropriate to that of the tie used. Spacers shall be of the “block” type and not of the tubular type. Samples of ties and spacers shall be submitted for approval by the Authorised Officer prior to them being used.
- 3.2.15.8 Ties shall be secured to the stake using three galvanised clout nails. One nail shall be placed each side of the spacer block to prevent it moving and the third shall be used to secure the loose end of the tie. The spacer shall not be directly nailed to the stake.
- 3.2.15.9 When instructed by the Authorised Officer the Contractor shall reduce the height of a Full Stake to that of a Half Stake. All existing ties shall be removed and the tree stake cut at the height as indicated in paragraph 3.2.15.1.. One tie shall be reaffixed to support the tree in the appropriate manner. The Contractor shall supply a new tie and spacer if the old tie is beyond re-use.
- 3.2.15.10 When instructed by the Authorised Officer the Contractor shall remove old or broken stakes from a tree. The removal of a stake shall be effected by pulling the entire stake from the ground and the resulting hole shall be back-filled with top soil and consolidated. On no account shall stakes be cut off at or near ground level. Any ties still attached to the tree shall be removed.
- 3.2.15.11 When instructed by the Authorised Officer the Contractor shall insert a single full length stake into a vacant tree pit, positioning the stake in the centre of the pit. This provision will apply only to circumstances where the pit is already vacant and not to those circumstances where the Contractor has been directed to remove or replant a sapling under other sections of the specification.
- 3.2.16 ROOT PRUNING
- 3.2.16.1 When instructed by the Authorised Officer the Contractor shall prune back roots as directed. In general this will be severing of roots which are one of the following;
- a) causing displacement of the adjacent surface
 - b) directly or indirectly affecting an adjacent property
 - c) damaged or dead.
- 3.2.16.2 The Contractor shall cut the roots in accordance with the specific instruction issued by the Authorised Officer.

3.2.17 CABLING AND BRACING

3.2.17.1 When instructed by the Authorised Officer the Contractor shall undertake cabling and bracing works in accordance with best practice current at the time and in accordance with the manufacturer's instructions applicable to the specific equipment being installed. The Contractor and the Authorised Officer shall agree the method and system to be used in each specific case.

3.2.18 WEEDING, MULCHING AND MAINTAINING SOIL LEVELS.

3.2.18.1 Where instructed by the Authorised Officer the Contractor shall remove weeds from specified tree pits individually not exceeding 1m² in area. Weeding shall include the removal of all annual and perennial weeds from a tree pit by either hand pulling or hoeing. If done by the latter method care shall be taken to ensure that the cambium at the base of the tree is not damaged. All weeds shall be removed from site. Should the Contractor find obvious signs that local residents have planted bulbs or other herbaceous garden plants in the tree pit they should be left in situ and the Authorised Officer informed. If the Authorised Officer has expressly indicated that such bulbs or plants are to be removed then the Contractor shall do so.

3.2.18.2 Where instructed by the Authorised Officer the Contractor shall apply an approved mulch to specified tree pits individually not exceeding 1m² in area. Mulch shall be applied evenly to a depth of not less than 50mm across the full area of the tree pit and the contractor shall ensure that the pit is entirely free of weed growth prior to the application of the mulch. The general requirements of Chapter 6, Section 3, paragraph 3.2 of the general Contract Specification shall apply to mulches supplied for Arboricultural works.

3.2.18.3 Where instructed by the Authorised Officer the Contractor shall top up or maintain the soil level within specified tree pits not exceeding 1m² in area. Soil used to top up soil levels in the tree sites shall comply with BS 3882 and shall be a top quality loam free from stones, rubbish, roots of perennial weeds or any other injurious matter. Trees may or may not be present in the site. Unless specifically indicated otherwise the pit shall be filled with topsoil and gently compacted so as to be firm and level with surrounding pavement or surface

3.2.19 MINOR PRUNING, FORMATIVE PRUNING, REMOVAL OF BASAL GROWTH AND CLEARANCE OF OBSTRUCTIONS

3.2.19.1 Where instructed by the Authorised Officer the Contractor shall undertake minor maintenance pruning to specified trees as follows;

- a) Cut off and remove any low, damaged or broken branches, including any basal or epicormic growth from staked trees not exceeding 5m in height. Such pruning works shall wherever possible be undertaken using secateurs or long handled loppers or by small hand saw. Chainsaws shall not be used for such works. Any branches removed shall be cut back to the nearest or most suitable branch union or the nearest point of growth. Basal or epicormic growth shall be cut off as close as possible to the stem without causing damage to the cambium.
- b) Cut off and remove any basal or epicormic growth from Acer Platanus or Tilia species which are either unstaked or which exceed a height of 5m. All

such growth originating from the stem at or below the break of the stem or the height of 2.5m (whichever is the lower) shall be removed. Basal or epicormic growth shall be cut off as close as possible to the stem without causing damage to the cambium.

- c) Cut and remove basal or epicormic growth from trees other than Acer Platanus or Tilia species which are either unstaked or which exceed a height of 5m. All such growth originating from the stem at or below the break of the stem or the height of 2.5m (whichever is the lower) shall be removed. Basal or epicormic growth shall be cut off as close as possible to the stem without causing damage to the cambium.

3.2.20 TREE CAGES: FITTING, REMOVAL AND REMOVAL OF LITTER

3.2.20.1 Where instructed by the Authorised Officer the Contractor shall supply and fit a galvanized wire mesh cage or “tree guard” to specified trees including the supply and placement of a new full length tree stake if necessary. Tree guards are to be galvanised “Weldmesh” type or similar and shall be of a type approved in advance by the Authorised Officer. Tree guards shall have a minimum diameter of 225mm when installed and shall be made of a minimum 2.5mm gauge wire. On installation stakes and guards are to be positioned so that the tree stem is positioned central within the guard. Guards are to be stapled to the stake using galvanised staples. Guards to be fixed so that their base is 150mm above the soil level. The top edge of the guard shall be at a height of 1600mm above ground level unless the break of the tree canopy is such that this height would cause abrasion of the lower branches. Should this be the case, the guard shall be cut so that the top edge is just sufficiently low to avoid such damage occurring. In these cases, guards must not be positioned lower on the stake, thereby reducing the 150mm clearance above ground level. The Authorised Officer will provide the Contractor with diagrams of fitting tree cages.

3.3.20.2 Whilst cages are normally fitted to saplings, the contractor may be instructed to fit cages to larger sized trees to protect them from damage or vandalism. In such cases, longer lengths of mesh, or multiple lengths are to be used. The same general principles as above shall apply so that the mesh is adequately affixed and supported so as not to cause abrasion or other damage to the tree.

3.2.20.3 Where instructed by the Authorised Officer the Contractor shall remove and dispose of a galvanized tree cage or guard from specified trees. Unless the Authorised Officer expressly specifies otherwise the Contractor shall at the same time remove any stakes and or ties attached to the guard or tree. Any hole left by the removal of a stake is to be filled with topsoil. In removing the guard the Contractor shall take care not to damage the cambium of the tree.

3.2.20.3 Where instructed by the Authorised Officer the Contractor shall remove and dispose of all accumulated litter or debris lodged within the tree guard of specified trees. The Contractor shall ensure that in removing the litter or debris the cambium of the tree is not damaged and shall if necessary remove and re-fit the guard. If it is necessary to remove and re-fit the guard, it shall be done in accordance with the provisions for installation of guards in paragraph 3.2.20.1 above

3.2.21 REMOVAL OF CLIMBING PLANTS

3.2.21.1 Where instructed by the Authorised Officer the Contractor shall remove ivy or other climbing plants from the stem and branches of the tree. The Contractor shall ensure that the climbing plant is severed as close to ground level as possible, and that all stems or runners of the climber are severed. All parts of the climbing plant are to be carefully removed from the tree unless otherwise instructed by the Authorised Officer. Removal of climbing plants will not usually be specified as an individual task, and will normally be specified in conjunction with crown reduction, crown thinning or crown lifting. There are Bill of Quantities items for these combined operations.

3.3 MINOR AD-HOC WORKS

3.3.1 GENERAL

3.3.1.1 Minor Works are those tree maintenance tasks which arise from time to time as a result of ad hoc inspections. They are generally of a modest nature and are works which are not so urgent as to merit being regarded as an emergency under the provisions of this contract, but which cannot await the next scheduled routine maintenance visit for the site where the tree is growing.

3.3.1.2 Minor Ad-hoc Works will be collated into a weekly Schedule which will be issued to, and collected by the Contractor on Monday each of week. The Contractor will be informed should there be no Minor Ad-hoc Works Schedule for any particular week.

3.3.1.3 A Minor Ad-hoc Works Schedule will include any number of items, generally but not exclusively within the range of five to twenty items. The items may relate to one or more trees on one or more sites anywhere within the Borough.

3.3.1.4 All items of work carried under the Minor Ad-hoc works provisions of the Contract will be priced at the appropriate rate for the task within the Bill of Quantities. Works which have no specific rate within the Bill of Quantities will be carried out at the Unscheduled Hourly Rate for works carried out during Normal Working Hours.

3.3.1.5 Minor Ad-hoc Works shall be completed within eleven days of the date of issue which shall include the Monday on which the works are issued. Consequently, the works shall be completed by the end of the second Thursday after the works are issued.

3.3.1.6 Minor Ad-hoc Works will be checked by the Authorised Officer for satisfactory completion on the twelfth day after issue of the Schedule.

3.3.1.7 Minor Ad-hoc Works which are found to be incomplete or not carried out to a satisfactory standard by the specified date will result in a default being issued for each item within the Schedule which is not complete.

3.3.1.8 For each item within a Minor Ad-hoc Works Schedule the Contractor shall record the date on which the item was completed. The records of completion shall be submitted to the Authorised Officer on a regular basis and the submission of such records shall be before the invoice for the appropriate Schedule.

3.3.1.9 For invoicing and payment purposes a weekly Minor Ad-hoc Works Schedule will be treated as a single item and will not be processed for payment until all works within the Schedule are satisfactorily complete.

3.3.1.10 Unless expressly indicated otherwise within the subsequent paragraphs relating to Minor Ad-hoc Works all items included within a Schedule of Minor Ad-hoc Works shall be carried out in accordance with the general provisions of section 15.2 of the Specification for tree maintenance works.

3.4 EMERGENCY SERVICES

3.4.1 GENERAL

3.4.1.1 Emergency Works are those works which require an immediate response and action or which require an action being taken more promptly than would be achieved by issuing works on the next weekly Minor Works Schedule.

3.4.1.2 The Contractor shall provide an arboricultural emergency response service for twenty four hours per day, for each day of the year throughout the Contract Period and the Contractor has tendered an Emergency Services Annual Sum for this set out at Schedule 2

3.4.1.3 For the purposes of this section of the Contract and notwithstanding the definitions in Chapter 5 (Conditions 1.30 and 1.31) of this Contract the Working Day and Working Week shall be divided into two parts as follows:

- a) Normal Working Hours which shall be from 07:00 to 18:00 Monday to Friday, excluding Public Holidays, each week and which shall be commonly called Normal Hours and,
- b) Outside Normal Working Hours which shall be all other times not defined by the definition above and which shall be commonly called Outside Hours.

3.4.1.4 The Council reserves the right to employ additional Contractors or persons to carry out emergency tree works.

3.4.2 PERSONNEL AND EQUIPMENT

3.4.2.1 The Contractor shall at all times ensure that sufficient climbing arborists, groundstaff and all necessary equipment are available and capable of undertaking all tree related emergency works necessary to resolve any number of tree related emergency situations through the Contract period. See also paragraph 3.1.14.(1&2).

3.4.2.2 The number of climbing arborists and groundstaff, together with the level of equipment attending any tree related emergency shall be commensurate with the type and level of tree related emergency works necessary to resolve the situation. Unless the Authorised Officer expressly indicates otherwise for any particular emergency situation, a team attending an arboricultural emergency shall not comprise less than three staff, of whom at least two shall be appropriately qualified climbing arborists

3.4.3 CONTACT ARRANGEMENTS AND DETAILS

3.4.3.1 The Contractor shall maintain and submit an up to date list of personnel forming the emergency response service. The emergency response service will be contactable for 24 hours for each day of the year throughout the Contract period.

- 3.4.3.2 Contact details for emergency response service personnel will include name, home address, mobile telephone number and home landline telephone number.
- 3.4.3.3 The Contractor shall nominate a person to act as the first point of contact when an emergency response is required. The person nominated as first point of contact may be subject to rota but in such case the rota shall be fixed and must be agreed in advance by the Authorised Officer.
- 3.4.3.4 The Contractor shall ensure that emergency response service personnel have the necessary means of communication to enable them to be contacted by the Authorised Officer at any time. The means of communication shall be approved by the Authorised Officer to ensure that emergency response service personnel can and will respond at any time throughout the Contract period.
- 3.4.4 RESPONSES AND RESPONSE TIMES
- 3.4.4.1 The Contractor shall respond to any verbal or written instruction from the Authorised Officer or any of his appointed representatives and will be at the site of the emergency within the timescale designated by the Authorised Officer.
- 3.4.4.2 The Authorised Officer shall notify the Contractor of the required response time for any emergency situation. Response times shall fall into the following categories;
- a) Immediate. The Emergency Response Service is required extremely urgently and shall arrive at the site as soon as possible and not later than 1 hour of being instructed to attend site.
 - b) Half Day. The Emergency Response Service is required promptly and shall arrive at the site and complete the necessary works within 4 hours of being instructed to attend site.
 - c) Full Day. The Emergency Response Service is required promptly and shall arrive at the site and complete the necessary works before the end of the working day on which the Contractor is instructed to attend site.
- 3.4.4.3 In the absence of detailed or precise instructions the Contractor shall carry out those works he considers necessary to render the site safe and shall not leave site until all the works considered necessary have been completed.
- 3.4.5 EMERGENCY WORKS ORDERS
- 3.4.5.1 The nature of emergency situations may make it impractical for written instructions to be issued to the Contractor before commencement of work
- 3.4.5.2 In this event, and especially if telephone instructions are received the Contractor shall make note of the name of the person issuing the instruction and shall confirm that he has fully understood and correctly recorded all details of each emergency instruction.
- 3.4.5.3 In cases where oral instructions have been received the Contractor shall notify the Authorised Officer of the details of emergency operations undertaken. Written confirmation shall be sent to the Authorised Officer within 1 Working Day. The Authorised Officer will on receipt of the written confirmation issue a retrospective written order for the works.

3.4.5.4 During the period designated as Normal Working Hours emergency situations will normally but not exclusively have been inspected by the Authorised Officer or his representative and the necessary instructions for dealing with the situation will be issued accordingly.

3.4.5.5 During the period designated as Outside Normal Working Hours it is possible that emergency situations have not been inspected by the Authorised Officer or his representative. Instructions to attend emergency situations during “Outside hours” may be issued on behalf of the Authorised Officer by the Council’s Emergency Services Officer. In such instances the Contractor shall use his knowledge and discretion in order to determine the most appropriate action to make the site safe.

3.4.5.6 In any instance where the Contractor attends site and considers that a serious situation has occurred and believes that a Council representative should attend he shall notify the Authorised Officer immediately. Such situations shall include, but not be confined to, injury to persons, significant damage to property or significant damage to vehicles. In cases of minor damage the Contractor shall exercise his discretion but in any case shall record the situation as directed by paragraph 3.4.7.1.

3.4.6 RECORD KEEPING

3.4.6.1 The Contractor shall record the following information regarding each emergency situation attended;

- a) The time of arrival on site
- b) The number of personnel attending site.
- c) The works carried out to render the situation safe.
- d) The time works were completed.
- e) The nature of any supplementary works not immediately essential to render the site safe but which in the opinion of the Contractor should be carried out promptly.
- (f) In cases of verbal instruction, the Contractor shall also record the address of the site attended and the species of tree.

3.4.7 PHOTOGRAPHS

3.4.7.1 The Contractor shall take digital photographs both prior to commencing, and after completion of, work in emergency situations in the following circumstances;

- a) When attending emergency situations during those parts of the week designated as the Outside Hours period (3.4.1.3(b)).
- b) When attending an emergency situation where damage has occurred to property or vehicles, photographs to include the damaged property/vehicles.

3.4.7.2 The contractor shall submit to the Authorised Officer copies of all such photographs in a digital or electronic format as soon as possible after the event. In any case such photographs shall be submitted prior to the submission of invoices.

3.4.7.3 In view of paragraphs 3.4.7.1 and 3.4.7.2 above, in order to avoid doubt, the Contractor may wish to consider taking and supplying digital photographs of all emergency works.

3.4.8 EMERGENCY PAYMENTS

3.4.8.1 The Contractor shall be paid to provide the emergency response service at rates set out in the Bill of Quantities as follows:

- a) The single fixed Emergency Services Annual Sum if applicable, provided by the contractor at Bill of Quantities 10-4, for providing the emergency response service during the Contract Period payable in twelve instalments of one per calendar month in accordance with Clause 11.1 of the Contract Conditions.

In addition the Contractor shall be paid in accordance with Clause 11 of the Contract Conditions for the completion of emergency works at rates set out in the Bill of Quantities as follows;

- b) If the works are carried out during the period designated as Outside Normal Working Hours they shall be paid at the appropriate rate set out in the Schedule of Hourly Rates for Emergency Works carried out Outside of Normal Working Hours, or
- c) If the works are carried out during the period designated as Normal Working Hours and there is an appropriate rate for the specified task within the Bill of Quantities the works shall be paid at such rate, or
- d) If the works are carried out during the period designated as Normal Working Hours and there is no specific rate in the Bill of Quantities for the works undertaken then the work shall be paid at the Unscheduled Hourly Rate.

APPENDIX 1

ARBORICULTURAL TRAINING REQUIREMENTS – MINIMUM COMPETENCIES

National Training & Proficiency Council Certificates of Competence

*Items asterisked are required for operatives whose duties include such tasks or where so specified within the Specification. Other items are desirable and the contractor should seek to train staff in as wide a range of tasks as possible.

ABWC02 Certificate of Competence in Brushwood Chipper Operations

Practical assessment of the use of brushwood chippers. Includes pre use checks and maintenance; identification of controls and instruments and operating the machine to chip material appropriate to the capacity of the machine.

Mandatory Units

UNIT_01 - Prepare the Brushwood Chipper for Operation *

UNIT_02 - Operate the Brushwood Chipper *

UNIT_03 - Maintain the Brushwood Chipper *

ACS03 NEW Certificate of Competence in Chainsaw and Related Operations

Mandatory Units

CS30.1 - Maintain and Operate the Chainsaw - Maintenance of the Chainsaw *

CS30.2 - Maintain and Operate the Chainsaw - On site Preparation and Basic Crosscutting *

Optional Units

CS31 - Fell and Process Small Trees 200mm - 380mm *

CS32 - Fell and Process Medium Trees 380mm - 760mm *

CS33 - Fell Large Trees - greater than 760mm *

CS34 - Process Individual Windblown Trees *

CS35 - Process Multiple Windblown Trees *

CS39 - Use of a Chainsaw from a Rope and Harness *

CS40 - Carry out Pruning Operations *

CS41 - Carry out Dismantling Operations *

CS42 - Carry out Stump Protection *

CS43 - Fell Utility Poles *

CS44 - Fell Standing Stems *

CS45 - Arboricultural Groundworker *

CS46 - Re-Pollard Trees at a Maximum Height of five Metres *

CS47 - Use of a Chainsaw from a Mobile Elevated Work Platform *

ACTR02 Certificate of Competence to Climb Trees and Perform Aerial Rescue

A pre requisite unit for any of the chain saw or electrical arboricultural units that involve working from within the tree. Covers knowledge of climbing equipment, accessing the tree with a rope and harness, moving around within the tree canopy and conducting a rescue to get a casualty down from a tree using their climbing system and the candidates climbing system.

Mandatory Units

UNIT_01 - Climb a Tree *

UNIT_02 - Conduct Aerial Rescue *

AO ARBORICULTURAL/FORESTRY AND RELATED MACHINERY OPERATIONS 1998

This series of practical tests will be of particular interest to professionals and trainees engaged in any aspect of commercial silviculture, tree surgery, amenity parkland, general tree care, hedgerow maintenance and associated management tasks. Some of the Arboricultural activities meet the requirements of the Royal Forestry Society Certificate in Arboriculture.

Optional Units

AO0198 - Planting
AO030198 - Bracing and Supporting (Cable/Propping/Rod) *
AO030298 - Bracing and Supporting (Rope) *
AO0698 - Brushwood Chipper
AO0798 - Stump Grinder
AO0898 - Chainsaw Maintenance and Operation (CS30,31,32)
AO0998 - Pruning Operations (CS40) *
AO1098 - Dismantling Operations (CS41) *
AO120198 - Maintain and Operate Brush Cutter
AO120298 - Maintain and Operate Clearing Saw / Brush Cutter
AO1498 - Brushing and Pruning with Hand Saw
AO150198 - Hand Weeding and Cleaning
AO1698 - Machine Maintenance (MO297)
AO2198 - Mobile Elevated Work Platforms

ASG02 Certificate of Competence in Stump Grinding Operations

Practical assessment of stump grinder operation. Includes pre use checks and maintenance; identification of controls and instruments and operating the machine to remove a tree stump.

Mandatory Units

UNIT_01 - Prepare the Stump Grinder for Operation *
UNIT_02 - Operate the Stump Grinder *
UNIT_03 - Maintain the Stump Grinder *

XARB03 Certificate of Competence in the Thorough Examination of Arboricultural Equipment

Mandatory Units

UNIT_01 - Principles of Thorough Examination of Arboricultural Equipment
UNIT_02 - Thorough Examination of items of Arboricultural Equipment

AMHO02 Certificate of Competence in Safe Manual Handling - Operator

Practical assessment of basic manual handling tasks. Includes assessing the load, planning route, marking hazards, moving loads, mechanical assistance and different types of load eg bagged, sheets, loose material ect.

Mandatory Units

UNIT_01 - Assess Manual Handling Operations *
UNIT_02 - Lift and Move a Load Safely *

AMWP02 Certificate of Competence in the Safe Use and Operation of Mobile Elevated Work Platforms

Practical assessment of preparation, operating and transporting a work platform. The assessment is conducted in the context of and certificate endorsed according to the type of MEWP used: either Scissor lift or Self propelled boom or Vehicle mounted to 26m or Trailer, Push around or Insulated aerial device or Vehicle mounted over 26m or Mast climbing or Vehicle personnel platform.

Mandatory Units

UNIT_01 - Prepare the Platform for Operation *
UNIT_02 - Operate the Platform *
UNIT_03 - Prepare the Platform for Transport *

APPENDIX 2

WASTE TRANSFER STATIONS

Location	Mon to Fri	Sat	Sun	Comments
WRWA Smugglers' Way Wandsworth SW18 1JS	07.30 to 16.00	07.30 to 13.00	07.30 to 12.00	Disposal for items that cannot easily be recycled may be available here.
WRWA Cringle Street Battersea SW8	24 hrs			Except Christmas Day by arrangement
A & J Bull Benedict Road Mitcham Surrey	As advised			
Corporation of the City of London Walbrook Wharf Upper Thames Street London EC4	As advised			
WLWA (WestWaste) Transport Ave. Brentford Middlesex	As advised			
LB Croydon Factory Lane Croydon Surrey	As advised			

APPENDIX 3

Wandsworth Contract Personnel and Contract Details

Name	Position	Office number	Mobile number
Parks Service Management Officers			
Paul McCue	Assistant Director, Leisure and Culture	8871 6868	07768 646140
Simon Ingyon	Head of Parks and Leisure Services	8871 8114	07766 504181
Jerry Birtles	Chief Parks Officer	8871 7022	07860 478496
Valerie Selby	Principal Parks Officer, Biodiversity and Development	8871 7019	07818 427448
Simon Cooper- Grundy	Chief Parks Officer	8871 8117	07802 313822
Arboriculture Officers			
Patrick Langley	Arboricultural Manager	8871 6370	07798 845366
Andy West	Arboricultural Officer	8871 6346	07789 926504
Andy Day	Arboricultural Officer	8871 6397	07939 597492
Suzanne Watkins	Arboricultural Adminstration Officer	020 8871 6372	-
vacant			
vacant			
Other Parks and Cemeteries Officers			
Clive Andrews	Bereavements Services Manager and Registrar	8871 7820	07860 532941
Steven Green	Principal Parks Officer, Operational Management	8871 8687	07802 313818
Donald Eckersley	Parks Officer, Horticulture	8871 8687	07802 313820
Kevin Freed	Parks Officer, Biodiversity	8871 8689	07876 462041
Andrew Green	Parks Officer, Sports Provision and Bookings	8871 8687	07795 427180
Sue Gray	Parks Officer, Cemeteries	8871 7820	07860 531077

APPENDIX 4

Ecological Areas

Ecological areas are located on the following sites:

Battersea New Cemetery, Lower Morden Lane
Battersea Park
Beverley Brook
Doverhouse Road playing field
Falcon Park
Garratt Green
King George's Park
Leader's Gardens
Putney Lower Common Cemetery
Putney Vale Cemetery
Shillington Street Open Space
St Mary's Cemetery, Battersea Rise
The Spit (River Wandle)
Tooting Common
Wandsworth Cemetery
Wandsworth Common

SCHEDULE 2
Detailed Rates and Emergency Services Annual Sum

[Tenderers completed Bills of Quantities will form Schedule 2 on award]

SCHEDULE 3

Method Statements

[to be inserted from the successful Tenderer's Tender]

SCHEDULE 4

Default procedures

PART A: Control Procedures

- 1 Staff Monitoring. The Contractor shall note that Condition 8 requires that the Contractor provides the Services to the Contract Standard and, that in specified cases, time is of the essence in that provision. The Contractor shall not rely on the Authorised Officer to notify him of any omissions or deficiencies in the provision of the Services but is required by Condition 8 to maintain his own systems to deliver the Services in a timely fashion to the Contract Standard.

- 2 Monitoring the Contractor's Work. All tasks will be inspected, on behalf of the Authorised Officer, to assess the Contractor's adherence to his Work Programmes and to ensure that the required standards of work are being achieved. The following procedure applies with regards to monitoring the Contractor's work and the issue of Rectification or Default Notices.
 - 2.1 If, at any time in the reasonable opinion of the Council the Contractor on any occasion shall have:
 - a) omitted to perform any part of the Services in the manner and to the Contract Standard then the Authorised Officer shall be entitled to issue to the Contractor a Rectification Notice setting out the omission or deficiency in the Services and requiring the Contractor at its own expense and in accordance with this Contract to remedy the omission or deficiency within a reasonable time specified in the Rectification Notice; or
 - b) omitted to perform any part of the Services, where time is of the essence, in the manner and to the Contract Standard required by the Contract then the Authorised Officer shall be entitled to issue to the Contractor a Default Notice setting out the omission or deficiency in the Services; or
 - c) failed to perform the remedy required by a Rectification Notice issued under Condition 2.1(a) above then the Authorised Officer shall be entitled to issue to the Contractor a Default Notice setting out the omission or deficiency in the Services to include those matters set out at 3.7.

 - 2.2 The Monitors may issue, on behalf of the Authorised Officer, Rectification Notices, or Default Notices where they identify any omission or deficiency in providing the Services to the required Contract Standards or in remedying a previous Rectification Notice as set out in 2.1 above. The provisions contained in this Schedule 4 shall apply as appropriate in respect of all Rectification and Default Notices issued.

 - 2.3 The Authorised Officer shall investigate any report, of an omission or deficiency in providing the Services, provided by members of the public and users of facilities. In cases where the reported omission or deficiency is confirmed the Authorised Officer shall issue Rectification Notices or Default Notices as appropriate and he shall certify appropriate deductions all in accordance with this Schedule 4.

 - 2.3 Checks made by monitors may be made by:
 - a) visual inspection on the ground making due allowance for any changes but could reasonably have occurred between the work and the inspection, or
 - b) visual examination of CCTV records or dated and time photographic records.

2.4 Where the Contractor reports orally, or in writing, to the Authorised Officer any deficiency or omission (which, for the avoidance of doubt, may include any delay in completion of a Service) before any Rectification or Default Notice has been issued by a Monitor or the Authorised Officer, and satisfies the Authorised Officer that an adequate remedy will be provided by an agreed time before any subsequent similar Service shown in the Work Programme, then the Authorised Officer will not issue a Rectification or Default Notice for that Service at that time. However if the remedy is not completed to the Contract Standard in the agreed time then the Authorised Officer shall issue a Rectification or Default Notice as he considers to be appropriate.

3. Part B: Default Sums

3.1 In the event that the Council serves a Rectification Notice the Council shall be entitled to deduct liquidated damages the unit value of £35.00 attributable to the administration costs in processing and issuing the Rectification Notice. The Rectification Notice shall serve as a certificate of deduction and the Council shall be entitled to deduct the liquidated damages from any invoice issued by the Contractor or from any other payment due by the Council to the Contractor or to recover as a debt.

3.2 In the event that the Council serves a Default Notice the Council shall be entitled to deduct the following liquidated damages:

- a) the unit value of £35.00 attributable to the administration costs of processing and issuing the Default Notice; and
- b) an amount equivalent to the daily value of any task calculated with reference to the sum as set out in the Bills of Quantities in respect of any omission or deficiency in the Services for which a Default Notice is issued in accordance with Condition 34 and may be deducted for each day or part thereof during which the default occurs or continues; and
- c) any sums as set out a 3.7 below.

The Default Notice shall serve as a certificate of deduction and the Council shall be entitled to deduct the liquidated damages from any invoice issued by the Contractor or from any other payment due by the Council to the Contractor or recover as a debt.

3.3 The liquidated damages are a reasonable and genuine pre-estimate of the Council's loss and damage in relation to any default. Such genuine pre-estimate of the loss or damage shall be in relation to the Council's administrative costs in servicing the notice, additional supervision, attendance on site, or inspections.

Any dispute over the amount or reasonableness of the deduction shall be referred for determination by the Expert in accordance with Condition 40.

3.5 Notwithstanding the issue of any Default Notice and any subsequent deduction the Contractor shall, unless otherwise instructed by the Authorised Officer, complete the omitted or deficient task or tasks to the required standard and by the agreed time at no further cost to the Council.

3.6 There are certain tasks, and groups of tasks, contained in the Specification to which immediate Default Notices (without the prior issue of Rectification Notices) shall apply in the event that the

task or tasks are not completed either on time, at all or in a proper manner (“Defaults”). These are:

- a) Any failure in the performance of the Services that results in the cancellation of the booked and programmed use of any sports facility;
- b) Any failure to close and lock barriers, gates, bollards and such other devices as specified;
- c) Any failure to report, on arrival, to the Officer in Charge at any Social Services Site;
- d) Failure to complete any task or tasks on time when a completion time has been specified by the Authorised Officer and agreed beforehand by the Contractor.

3.7

As referred to at 3.2(c) above, there are a number of tasks or groups of tasks which are considered significant to the Council such that additional deductions (liquidated damages) shall apply (in addition to the deductions set out at paragraph 3.2 above) in the event of omissions or deficiencies in their provision. These are:

<u>Task</u>	<u>Additional Deduction</u>
a) Any failure in the performance of the Services that results in the cancellation of the booked and programmed use of any sports facility.	The reimbursement (by the Contractor) to the hirer of the full booking fee plus payment in full of the hirer’s claim for costs incurred as a result of the failure.
b) Any instance where the Contractor damages any grave memorial, or any part of a grave, by his acts or his omissions.	The Contractor to pay the full costs of any repairs or replacements required as a result of his failure together with the reimbursement of any additional costs, claims or other expenditure incurred by the Council as a result of the failure.
c) Any failure to close and lock barriers, gates, bollards and such other devices as specified.	A deduction of £60 per occasion.
d) Failure to report, on arrival, to the Officer in Charge at any School or Social Services Site.	A deduction equivalent to the total cost of the programmed works still to be completed.
e) Any instance where the Authorised Officer is unable to contact the Contractor in respect of Emergency Services required by the Council.	A deduction of £60 plus the equivalent to 1/360 of the Emergency Services Annual Sum (Bill of Quantities 10-4), plus the total additional costs incurred by the Council in calling out another contractor. The Contractor shall also be liable for any further costs, claims or other unforeseen expenditure arising from his failure.
f) Any failure by the Contractor to attend site in respect of Emergency Services requested by the Council.	A deduction of £60 plus the equivalent to 1/360 of the Emergency Services Annual Sum (Bill of Quantities 10-4), plus the total additional costs incurred by the Council in calling out another contractor. The Contractor shall also be liable for any

	further costs, claims or other unforeseen expenditure arising from his failure.
g) Any failure by the Contractor to attend site within the specified timescale in respect of any Emergency Services.	A deduction of £60 plus the equivalent to the cost of the task plus 1/360 of the Emergency Services Annual Sum. The Contractor shall also be liable for any further costs, claims or other unforeseen expenditure arising from his failure.
h) Any instance where the Contractor fells the wrong tree.	A deduction equivalent to the cost of the specified task plus i) the cost of purchasing, replanting and maintaining for one year, a tree of equal size or the largest size practically possible to plant in the site and, ii) the greater of the two monetary values of the felled tree as valued under the Arboricultural Association Guidance Note 4 (The Helliwell System) and the CAVAT system. In addition the Contractor shall fell the correct tree at no cost to the Council.
i) Any instance of arboricultural work carried out to a different specification to that instructed by the Authorised Officer, or not carried out to the required standard such that the tree's health, safety or amenity value are compromised.	A deduction equivalent to the value of the specified task plus a deduction equivalent to the greater of the two monetary values of the loss of amenity value as valued under the Helliwell System and the CAVAT system.

Part C: Suspension

- 3.8 Should the standard of Services provision repeatedly fail to meet the Contract Standard (and a prior written notice shall have been issued to the Contractor in this respect), the Authorised Officer may, at his entire discretion and without terminating the Contract, arrange for the Council itself to provide or procure such Services as may be necessary for the satisfactory performance of that part of the Services until such time as the Contract Manager shall have demonstrated to the reasonable satisfaction of the Authorised Officer that the Contractor will be able to perform such part of the Services to the Contract Standard.
- 3.9 During such period of suspension referred to in paragraph 3.8, the Council's payment to the Contractor corresponding to the suspended part of the Services shall be suspended, and the Council may recover under Condition 11 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 paragraph 3.8 to the extent that such direct costs exceed the payment which would have otherwise been payable to the Contractor for such part of the Services and all or any of the costs thereby incurred may be deducted from any sums due or to become due to the Contractor under this Contract, or may be recoverable from the Contractor by the Council as a debt. The rights of the Council under this Condition shall be without prejudice to any of its other rights under the Contract. The Authorised Officer shall have regard to representations made by the Contractor in respect of the amounts of such suspended payments or amounts recovered. In

the event that the Contractor does not agree the extent to which suspension is applied, or to the amount or the reasonableness of the payments suspended or recovered, then such matters shall be referred for resolution by an Expert in accordance with Condition 42.

- 310 Where a deduction has been, or is to be, certified, the Council shall, for the Contractor's information and for the purposes of this Part C, serve a Default Notice on the Contractor specifying the default and the amount of the deduction
- 3.11 From time to time, the Authorised Officer shall review the overall performance of the Contractor in maintaining the overall Contract Standards across the Borough and may, at his discretion, authorise a rebate of all or part of any sums previously deducted under this Part C where he is satisfied with that overall performance and in particular satisfied that the overall performance has improved sufficiently to have recovered and maintained the required Contract Standards.
- 3.12 For the avoidance of doubt, the deductions to be made under this Part C (Suspension) shall be without prejudice to any other rights and remedies of either party at law.

SCHEDULE 5

Employers' Forum on Disability Agenda on Customers

POLICY AND TOP LEVEL COMMITMENT

Service to disabled customers will form an integral part of the company's product and service standards. A company-wide policy will be agreed by the top team and communicated to the rest of the company.

MARKET RESEARCH

Steps will be taken to understand disabled people's preferences and requirements. Complaints and customer feedback mechanisms will be made accessible to disabled customers.

DESIGN OF PRODUCTS AND SERVICES FOR ALL

Regular reviews of the accessibility of products and services to disabled people will be undertaken and acted upon. Whenever possible, the company will consult disabled people as experts and consumers on products and service design.

PHYSICAL ENVIRONMENT

All reasonable steps will be taken to ensure that the physical environment does not prevent disabled people from doing business with us.

STAFF TRAINING AND DISABILITY AWARENESS

Specific steps will be taken to raise awareness of disability among employees involved in developing, marketing and delivering products and services to customers. Training will be made available to communicate service standards and to equip employees to achieve these.

COMMUNICATION WITH CUSTOMERS

The availability of accessible products and services will be communicated to disabled customers, while advertising and other images will reflect a diverse customer base. A variety of formats will be used in our communications with customers.

INFLUENCING OTHER ORGANISATIONS

Suppliers, contractors and franchisees will be encouraged to adopt this agenda.

INVOLVEMENT IN THE WIDER COMMUNITY

The company will recognise and respond to disabled people as suppliers, shareholders, employees and members of the community.

MONITORING PERFORMANCE

Progress in implementing the key points of this Agenda will be monitored. There will be a regular audit of performance reviewed at Board level. Achievements and objectives will be published in the UK annual report.

SCHEDULE 6

CUSTOMER SERVICE

Wandsworth Council recognises the importance of customer care in public services and has for many years followed a comprehensive approach to quality service delivery. 'initiatives. A strong focus on customer service should be a routine part of our service delivery and management.

In order to maintain high standards of customers service the Council seeks to:

- (i) set clear standards for service performance – and monitor these standards;
- (ii) put the customer first;
- (iii) make sure communication and information is presented in Plain English;
- (iv) encourage complaints and dealing with them in a speedy and efficient way;
- (v) carry out customer research and act on the views of users and others;
- (vi) seek external accreditation where applicable to test ourselves against the best;
- (vii) make sure that services deliver value for money and
- (viii) review and report quality improvements every year through the annual quality and performance review.

To promote customer awareness and help improve the way we deal with our customers, staff should be aware of and adopt effective telephone behaviour, good customer care, how to deal with difficult situations and customer complaints, and use plain English. The first impression customers receive is important and sets the tone for the rest of the contact with them and there are many ways to make sure this is a favorable one. Try to understand what the customer wants and provide clear and accurate information in a friendly and helpful way.

The continuing success of Wandsworth in providing quality services shows the commitment and involvement of staff in this process. This includes staff within contracted or agency services.

July 2011

SCHEDULE 7

Staff Information

I. Staff Tender Information

“Staff Tender Information” shall mean –

1. Number of staff to be transferred;
2. Gender;
3. Date of Birth;
4. Whether disabled for the purposes of the Disability Discrimination Act 1995;
5. Job description;
6. Work Location;
7. Conditioned hours of work per week;
8. Date of commencement of continuous employment and (if different) the commencement date;
9. Relevant Personnel Documentation;
10. Annual salary and rates of pay band/grade including pending increases;
11. Shifts, unsociable hours or other premium rates of pay;
12. Allowance and bonus details over the last twelve (12) months including date, type, amount and pending allowances/bonuses;
13. Leave entitlement;
14. Any factors affecting redundancy entitlement (including contracted redundancy policies);
15. Whether currently on maternity leave or other long term leave of absence;
16. Details of all dismissals or terminations of employment within the preceding six (6) months of anyone previously employed to or engaged in connection with the provision of the Services;
17. Details of all agreements or arrangements (whether or not legally binding) entered into in relation to the staff with any trade union or organisation or body representing employees or with any employee representatives;
18. Details of all trade disputes and industrial action occurring at any time during the preceding twelve (12) months to which any member of staff was a party;
19. Details of any trade union or organisation or body representing employees.
20. Any other information which is reasonably necessary in order to consider whether a particular individual should be a Future Transferring Employee

II. Staff Transfer Information

“Staff Transfer Information” shall mean –

1. Personal Details

Gender;

Date of Birth;

Whether known to be disabled for the purposes of the Disability Discrimination Act 1995, and details of any reasonable accommodation in respect thereof;

2. Employment Details

Job Title;

Staff Number;

Job Description;

Work Location;

Conditioned hours of work per week;
Date of commencement of continuous employment and (if different) commencement date;
Notice Periods (for employer and employee);
Annual salary and rates of pay band/grade including pending salary increases; Shifts, unsociable hours or other premium rates of pay;
Overtime entitlement and details of last twelve (12) months overtime;
Allowance and bonus details over the last twelve (12) months including date, type, amount and pending allowances/bonuses;
Provisional details about standing loan/advances on salary or debts;
Existing and future training or sponsorship commitments;
Leave entitlement and accrued leave entitlement including any leave outstanding or expected to be outstanding at the Future Transfer Date;
Annual leave reckonable service date;
Additional employment benefits;
Other payments;
Copies of pay slip data for immediately preceding five (5) months;
Provisional details of Cumulative Pay (for tax and pension purposes) and cumulative tax paid;
Tax Code;
Voluntary deductions from pay;
National insurance (NI) Number,
NI Contributions rate;
NI benefit start date;

3. Records of Employment Service

Last two appraisal report markings and/or performance assessment details and dates thereof;
Sickness and absence records for two (2) years immediately preceding (including maternity leave);
Details of any current warnings for breach of discipline or poor performances including warning reason, warning date, warning status and start and end date or penalty period.
Details of any other outstanding disputes or grievances including all proceedings before any Employment Tribunal.

4. Method of payment

Instrument of payment;
Bank/building society account details for payroll purposes.

5. General Practices and Policies

Maternity, paternity and parental leave (including names of those on long-term leave or maternity leave);
Special leave and career breaks;
Sick leave and pay;
Disciplinary/grievance policy and procedures;
Equal Opportunities policy;
All documents relevant to terms and conditions of employment, including manuals, codes, handbooks, procedure guides, publications and agreements (including collective agreements);
Any other letters or documents or collective agreements affecting terms and conditions of employment;

6. Redundancy

Full details of any practice, policy or procedure in relation to redundancy and copies of relevant documents.

III. TUPE Employees

TUPE Employees shall mean the following employees [*identified by employee reference no.*]:

SCHEDULE 8
Council's Inter-Agency Guidelines
(See Condition 15.5.3)

Safeguarding Children

The Contractor shall provide the Services in accordance with the protocols and procedures of the Wandsworth Safeguarding Children Board (WSCB). In particular, the Contractor shall be familiar with the London Child Protection Procedures. These protocols and procedures are available on request or can be found on the Council's website at the following page:

<http://www.wandsworth.gov.uk/Home/Safeguarding/Procedures/default.htm>

Safeguarding Vulnerable Adults

The Contractor shall provide the Services in accordance with the Council's Interagency Guidelines for Protecting Adults, which are available on request or can be found on the Council's website at the following page:

<http://www.wandsworth.gov.uk/Home/CommunityServices/SocialServices/ssdocuments.htm>

SCHEDULE 9
Aggressive Persons Information Sharing Protocol
(See Condition 15.5A)

Wandsworth Borough Council and _____,
described in this protocol as “partners”, in recognition of our responsibilities for the health and safety of our employees and non-employees under the Health and Safety at Work etc Act 1974 and for the way we manage personal information under the Data Protection Act 1998, have agreed the following information exchange protocol.

By signing this protocol we declare our commitment to the procedures it sets out:

AGREEMENT

SIGNED _____ Date: _____

Wandsworth Borough Council

SIGNED _____ Date: _____

Designation: _____

Supplier's Name: _____

Any partner may withdraw from this protocol upon giving written notice to the other signatory. Data that is no longer relevant should be destroyed or returned. The partner must continue to comply with the terms of this protocol in respect of any data that the partner has obtained through being a signatory.

1. Introduction

1. Wandsworth Council's staff are occasionally subjected to acts of verbal and physical aggression during their course of work, especially during lone working and visiting the homes of the Council's residents. In trying to control the risks, a database has been set up to hold information about members of the public who have been aggressive to the Council's staff, or have the potential of being violent (the "Aggressive Persons Register").
2. The Council acknowledges that its contractors may also come into contact with some aggressive persons, and hence should be provided with relevant and factual information from the Register in order to minimize the risks of such acts of aggression.
3. In addition, contractors' staff could be subject to acts of verbal and physical aggression in the first instance. The Council expects full reporting of such incidents and cooperation of the contractor in their investigation and any follow-up action. Categories of incidents are shown in Appendix A to this protocol.
4. It is important for both the Council and its contractors to exchange relevant information with the overall aim of ensuring the health and safety of staff and to reduce the likelihood of incidents.
5. The purpose of this protocol is to facilitate such exchange of information and to set rules for this.

2. Partnership Responsibilities:

1. Partners will ensure that:
 - a. information exchanged will be accurate, fair and conform to the principles of the Data Protection Act 1998;
 - b. only the minimum amount of information necessary will be provided;
 - c. under no circumstances will personal information be divulged to third parties;
 - d. under no circumstances will an 'Aggressive Person' be informed by the contractor that his/her details are on the Aggressive Persons Register;
 - e. the contractor will abide by the 'minimum control measures' information (as provided by the Council) and their own guidelines/procedures/staff training as regards dealing with confrontational situations;
 - f. partners will enforce all sections of this protocol;
 - g. exchanges of information will be recorded for audit purposes; and
 - h. this protocol will be reviewed annually.

3. Legal Considerations

1. This protocol is subject to various legislation which governs how information can be exchanged. One of the main principles underlying the disclosure of personal information is the duty of

confidentiality owed to the public. The public interest in disclosure should be weighed against any potential prejudice to the individual.

2. Section 115 of the Crime and Disorder Act 1998 (CDA) allows contractors to provide information to the Council where “necessary and expedient” for the purposes of the Act. Appendix B gives examples of activities covered by the CDA.
3. The main Act governing the exchange of personal information and protection of the data subject’s rights is the Data Protection Act 1998 (DPA). The DPA covers all personal information that relates to living people. It does not cover depersonalised information. The principles governing this Act are included in Appendix C.
4. Under the DPA personal information can be disclosed with the data subject’s consent. Even without consent there may still be lawful grounds for disclosure, e.g. if it is necessary for compliance with a legal obligation other than one imposed by contract (such as health and safety duties); for the exercise of any functions conferred by or under any enactment; or for the exercise of any function of a public nature exercised in the public interest.
5. The Information Commissioner’s guidance¹ as regards passing this type of information to other organisations is as follows:- “ In some cases a data controller may consider that other organisations who are likely to have contact with an individual considered to be potentially violent should be made aware of this fact. ... In passing on (or disclosing) such information the Schedule 2 condition most likely to apply is that the processing is necessary: *for the exercise of any ... functions of a public nature exercised in the public interest by any person.* ”
6. By signing this protocol the partners agree to comply with all relevant legal requirements.

4. Information Exchange Process

4.1 General guidance for partners

1. Personal data from the Register remains the property of the Council, and is the responsibility of the data controller as defined by the Data Protection Act 1998. For the purposes of this protocol data control is a function of the Information Co-ordinators [IC]. The Council department, with whom the contractor has entered this agreement, remains responsible for the processing of the data. The contractor receiving the data will not use it for any purpose other than that set out in this protocol, nor share it with any other party, without the Council’s written permission.
2. As part of the contract to provide a service to the Council, the contractor is expected to make arrangements with the nominated ICs to be supplied with the relevant information.
3. Initially, pending the development of an Internet-based system, information will be provided in hard copy format. Hard copy information would also be used as a back-up should the Internet-based system be unavailable for a period of time
4. In due course, relevant data from the Aggressive Persons Register will be made available to the contractors via a secure portal through the Internet. The contractor will then be expected to check the Aggressive Persons Register before they visit a site.
5. The contractor will hold data supplied to them in a secure place for no longer than is necessary. Data storage will be reviewed regularly and old information disposed of securely.

¹ Data Protection Act 1998 Compliance advice - Violent warning markers: use in the public sector.

6. Access to personal information by staff other than nominated ICs will be limited to employees whose work is likely to bring them in contact with the Aggressive Person.
7. In cases where the contractor becomes aware of information, which was previously unknown to the Council, and which may lead to either the prevention or reduction of crime and disorder then the disclosure of that information to the Council will be covered by this protocol.

4.2 Guidance for nominated Information Co-ordinators

1. Each partner will nominate an information co-ordinator [IC] who will manage the information exchange. Only the ICs of partner agencies can make formal requests and document agreements for sharing personal information.
2. To this end, the departmental representative on the Aggressive Persons Register Working Group is the nominated IC for the department. He/she may nominate a deputy in his/her absence and/or delegate this task to an appropriate member of the department, and the department may also provide the contractor with contact details other relevant officers.

Departmental IC: To be advised

Other contacts:

Contractor IC: _____

Email Address: _____

3. IC responsibilities include ensuring that:
 - a. processing personal data is in keeping with the Data Protection Act 1998;
 - b. when dealing with sensitive personal data, it is kept securely and processed in accordance with the rights of the data subjects in keeping with the Data Protection Act 1998;
 - c. information disclosure is for the detection and prevention of crime and disorder stipulated in S115 of the CDA; and
 - d. they keep a record of all their information sharing documents including taking notes of all meetings, correspondence and phone calls.

5. Security and Data Management

1. It is the partners' responsibility to ensure that adequate security arrangements are in place, in order to protect the integrity and confidentiality of the information held.
2. Disclosed personal information must:
 - a. be protected by back-up rules
 - b. be password protected
 - c. be stored in a secure filing cabinet when not in use

- d. be located in a geographically secure place
3. The partners understand that all these measures need to be taken to ensure their security and to protect the general public. They agree that all information retained by them will be kept securely and for no longer than is necessary.
4. All data held by the partners is subject to a specified 'shelf-life' to be agreed by each partner.
5. Any historic/out-of-date electronic and/or hard-copy information containing personal data must be deleted / shredded or otherwise disposed securely.

6. Audit

1. **Audit of Data:** Partners undertake to ensure that they will collect, process, store and disclose all data held by them, within the terms of this protocol and the relevant legislation; and to ensure that all information held is accurate, relevant and fit for the purpose for which it is intended.
2. **Audit of Security:** Partners agree to store and dispose of all data securely, and to conduct annual audits of their security arrangements to ensure they are effective.
3. **Audit of Protocol:** Partners undertake to conduct regular audits of the use of this protocol to amend it as necessary and ensure it remains effective.

7. Complaints and breaches

Complaints:

1. Initial complaints must be referred to the appropriate IC.
2. Partners undertake to do all that they can within the guidelines of the Data Protection Act 1998, to assist with any complaint.

Breaches:

1. Partners agree that any breach of confidentiality will seriously undermine and affect the credibility of the partnership objectives and may constitute a breach of the law.
2. Partners undertake at all times to comply with data protection and other legal requirements relating to confidentiality. Any breaches may constitute gross misconduct and appropriate disciplinary action may follow.

APPENDIX A - TYPES OF INCIDENTS INCLUDING THOSE BY PHONE, FACE-TO-FACE, OR WRITTEN

Main type	Sub-category	Priority	Min. Review
1. Verbal Abuse	1.1 Bad language only as part of their own language – not meant by the perpetrator to offend and not threatening	None	Not Applicable: no entry made in the APR
	1.2 Foul and abusive language directed towards staff or Council in an aggressive way	V. Low	Automatically deleted after 6 months, if no further incidents occur.
	1.3 Discriminatory (Sexual, disability, age, homophobic, religious etc.)		
	1.4 Racial Discriminatory		
	1.5 Severe or multiple cases of Verbal Abuse	V. Low	1 yearly
2. Damage to property	2.1 Kicking / punching etc. property or throwing of objects around	Low	18 months
	2.2 Actual damage		
3. Threat	3.1 Verbal / written threat of violence towards staff (including involving members of public only in presence of staff) - see 4.3 and 4.4 for more serious threats.	Medium	2 years
4. Physical Assault	4.1 Minor bodily harm (e.g. a push)	High	3 years
	4.2.1 Serious bodily harm (e.g. punch / kick)	V. High	5 years
	4.2.2 “Hostage” (incidents where staff are detained against their will)		
	4.3 Threat of violence using an implement		
	4.4 Attack using a weapon or an implement, and / or weapon used to threaten violence		
	4.5 Fatality		
5. Sexual Threat/ Assault	5.1 Inappropriate sexual conduct (e.g. making sexual remarks and / or gestures)	Low	18 months
	5.2 Indecent Exposure	High	3 years
	5.3 Sexual Assault	Very High	5 years
	5.4 Serious Sex Offenders (to include non-repeat offenders)	Very High	5 years
6. Referral	6.0 Referral by other agencies (e.g. involving potentially violent drug offenders, and not necessarily involving an incident to our staff)	High	3 years (or longer depending on the severity of the incident)
7. ASBO	7.0 Anti-Social Behaviour Orders involving categories 1-5 above and likely to affect the Council’s staff or contractors.	High	As directed by the courts Or as above categories

APPENDIX B

Provisions of the Crime and Disorder Act 1998

Matters covered by the Crime and Disorder Act 1998 include:

- Anti-Social Behaviour Orders
- Child Safety Orders
- Detention and Training Orders
- Drug Treatment and Testing
- Local Child Curfew Schemes
- Parenting Orders
- Seizure of noise-making equipment
- Car crime
- Racially aggravated offences
- Reparation Orders
- Removal of truants
- Supervision Orders
- Youth Courts
- Youth Justice Plans
- Youth Offending Teams
- Sex Offender Orders
- The reduction of crime and disorder in the area
- Reprimands and warnings (and cautions/supported cautions in the interim period)

APPENDIX C

Data Protection Principles:

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and, where necessary, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be processed in accordance with the rights of data subjects under this Act.
7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

