

FREETHS

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DATED

2017

(1) MELTON BOROUGH COUNCIL

(2) []

WASTE COLLECTION AND STREET
CLEANING SERVICES CONTRACT

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Termination Date) and which the Contractor or, at the Termination Date, the Council or a successor contractor requires to carry out the Services in accordance with this Contract including:

- (a) any plant, machinery and equipment¹;
- (b) any books and records (including operating and maintenance manuals, health and safety manuals and any other know-how);
- (c) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred;
- (d) any revenues and any other contractual rights; and
- (e) any intellectual property rights;

Assisted Collections

the collection of waste Receptacles from an agreed location within the boundary of a residential premise for householders who are on the Council's nominated list for such assistance;

Authorised Officer

the Head of Regulatory Services for the time being of the Council or the successor in title to that post in the event of a change in the organisation of the Council;

Bank Holidays

all statutory bank or public holidays;

Best Value Duty

the duty imposed on the Council by the Local Government and Public Investment in Health Act 2007 in relation to, inter alia, the Services;

Bring Site

a recycling site where residents 'bring' their Recyclable Household Waste to a specified site for the purpose of Recycling;

Bulk Bin

means a Receptacle with a capacity greater than 360 litres;

Bulky Waste

large waste items subject to a separate collection;

¹ Ensure vehicles fully dealt with on agreed basis.

Business Continuity Plan	a plan for the continued provision of the Services set out as Schedule 9;
Capital Expenditure	any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the UK from time to time;
Certificate of Satisfaction	the certificate issued on satisfaction of the Conditions Precedent by the Authorised Officer pursuant to Clause 3 (Conditions Precedent);
Change in Law	the coming into effect after the date of this Contract of: <ul style="list-style-type: none"> a) Legislation, other than any Legislation which on the date of this Contract has been published; <ul style="list-style-type: none"> i) in a draft Bill as part of a Government Departmental Consultation Paper; ii) in a Bill; iii) in a draft statutory instrument; or iv) published as a proposal in the Official Journal of the European Union; b) any Guidance; or c) any applicable judgment of a relevant court of law which changes or establishes a binding precedent;
Cleanliness Standards	these refer to the four standards of cleanliness as defined and described in the Code. Reference will be made to the photographs in the Code as guidance to the application of the standards for litter and detritus;
Cleansing to the Required Standard	the use of all or any of the methods defined above, subject to any restrictions imposed by the Contract, to achieve the required standard;
Clinical Waste	shall have the meaning given in The Controlled Waste Regulations 2012;

Code of Practice	the Code of Practice on Litter and Refuse 2006;
Conditions Precedent	the conditions precedent to the execution of this Contract listed at Schedule I (Conditions Precedent);
Collected Waste	waste arising from a household as defined under Section 75 of the Environmental Protection Act 1990, together with Clinical Waste;
Collection Point	shall mean the point from which the Contractor shall collect Waste however contained, and the point to which the Contractor shall return the relevant Receptacle. The collection point shall be one of the following: <ul style="list-style-type: none"> (a) a point at which the boundary of the Property abuts the nearest public highway; (b) a point at which the boundary of the Property abuts a public or private footpath which links the Property to the nearest highway; (c) in respect of terraced Property sharing a common passage, a point immediately at the boundary of the passage nearest to the collection route; (d) the point at where the Communal Receptacle is stored between collections; or (e) at any other point within or adjacent to the Property which shall be determined by the Authorised Officer as the collection point;
Collection Schedule [of Working]	means a schedule prepared and submitted by the Contractor in accordance with paragraph 1.2.15 of the Specification and "Collection Schedule" shall be construed accordingly;
Commercial Waste	as defined by UK law (currently the Environmental Protection Act 1990 and the Controlled Waste (England and Wales) Regulations 2012);
Commercially Sensitive Information	any information which is agreed by the parties

	at the time of the Contract as being commercially sensitive;
Composted	means in this case Garden Waste which has been broken down by the actions of micro-organisms either aerobically or anaerobically at a central compositing or anaerobic digestion facility and that is compliant with the calculation of NI 192 and “Compost”, “Composting” and “Compostable” shall be construed accordingly;
Consents	all permissions, consents, approvals, certificates, permits, licences and authorisations of the Relevant Authority required for the performance of any of the Contractor’s obligations under this Contract;
Contingency Facility	means an alternative Facility provided by the Contractor to ensure continuity of the Service;
Contingency Plan	means the plan required by paragraph 4.2.5 of the Specification;
Contract	this Contract as concluded between the Council and the Contractor including all Schedules, annexes, appendices and Specifications hereto, together with any variations agreed by the Council and the Contractor in accordance with Clause 22 (Variations for Change in Service);
Contract Documents	the Contract and all other documents contained or referred to therein, appendices and attachments contained in or supplemental to this Contract;
Contract Expiry Plan	has the meaning given in paragraph 4.2.9 of the Specification;
Contract Payment	the monthly payment calculated in accordance with Schedule 4 (Payment Mechanism);

[Contract Relations Panel	the joint Contract Relations Panel to be convened pursuant to Clause 38 (Contract Relations Panel);] ²
Contract Standard	the standard of performance required to be achieved by a diligent contractor of the size and substance of the Contractor at the date of this Contract acting in full accordance with the requirements of this Contract, including Legislation, Consents, the Contractor's Contract Delivery Plans and Good Industry Practice;
Contract Term	the term of the Contract as provided for in Clause 9;
Contract Waste	<ul style="list-style-type: none"> (a) any waste which the Council has a duty to collect pursuant to Section 45(1) of the Environmental Protection Act 1990 but excluding Clinical Waste (other than Clinical Waste from households); (b) Waste that the Council collects, including controlled wastes, to fulfill its obligations to: <ul style="list-style-type: none"> (i) keep the Area free of litter and refuse under the Environmental Protection Act 1990 Part IV s.89; and (ii) keep highways free-draining, free of obstruction and nuisance including but not limited to its duties under the Highways Act 1980 s.100, s.149 and 150;
	;
Contract Year	a 12 month period commencing on the Service Commencement Date;
Contractor Change	a change in service notified by the Contractor pursuant to Clause 22;

² Being considered.

Contractor Default

one of the following events:

- a) breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the ability of the Contractor to comply with the terms of this Contract or to perform any of the Services;
- b) a failure by the Contractor to comply with a Warning Notice issued within the previous twelve (12) month period;
- c) a court makes an order that the Contractor/Guarantor be wound up or a resolution for a voluntary winding-up of the Contractor is passed;
- d) any receiver or manager in respect of the Contractor/Guarantor is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- e) any voluntary arrangement is made in respect of the Contractor/Guarantor for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006;
- f) an administration order is made in respect of the Contractor/Guarantor;
- g) a material breach by the Contractor of its obligations in Clause 23 (Employees) occurs;
- h) a material breach by the Contractor of its obligations in Clause 26 (Termination or expiry of service period occurs);
- i) the Contractor committing a material breach of its obligations under this

Contract (other) than as a consequence of a breach by the Council of its obligations under this Contract) which results in the criminal investigation, prosecution and conviction of the Contractor or any other Contractor Party under Environmental Laws or Health and Safety Laws (a “Relevant Conviction”) provided that a Relevant Conviction of a Contractor Party shall not constitute a Contractor Default if, within ninety (90) Working Days from the date of the Relevant Conviction (whether or not the Relevant Conviction is subject to an appeal or any further judicial process), the involvement in the Services of each relevant Contractor Party (which in the case of an individual director, officer or employee shall be deemed to include the Contractor Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Contractor;

j) a breach by the Contractor of its obligations to take out and maintain required insurance pursuant to Clause 29 (Insurance);

Contractor Party

the Contractor’s agents and contractors (including without limitation the Contractor and the Sub-Contractors) and its or their Sub-Contractors of any tier and its or their directors, officers, employees and workmen in relation to the Contract and “Contractor Parties” shall be construed accordingly;

Contractor’s Representative

the representative of the Contractor appointed under Clause 36 (Representatives);

Contractor’s Tender Submission

the Contractor’s response to the Invitation to

	Submit Final Tenders [], as clarified on [], incorporating the Service Delivery Plans contained at Schedule 5;
Council's Representative	means the representative appointed by the Council;
Council's Safety Adviser	the person so appointed by the Council for the purposes of Clause 13 (Health and Safety);
Council's Standing Orders / Constitution	the Council's Standing Orders or Constitution as amended from time to time;
CPI	the Consumer Prices Index published by the Office for National Statistics or if the CPI ceases to be published or is not published in any month, such alternative index which the parties agree (or, in the absence of agreement, by referring the matter for resolution in accordance with Clause 37 (Dispute Resolution) produces, as nearly as possible, the same result;
Customer, Service User or Public Complaint / Complaint	a complaint by a customer or a member of the public about the standard or performance of the Services which is notified either direct to the Contractor or to the Contractor through Council's Complaints system and/or by the Authorised Officer;
Data	all drawings, reports, documents, plans, software, formulae, calculations and other data or information relating to the carrying out and/or operation of the Services or any part thereof;
DBS	the Disclosure and Barring Service;
Deductions	the financial deductions from the Contract Payment contained in Schedule 2 Appendix 2 made in respect of any failure to meet the required standards;
Default Interest Rate	four per cent above the base rate from time to time of the HSBC Bank;
Designated Collection Facility	means any site approved under the WEEE Regulations 2013 for the management of waste

Detritus	<p>electrical and electronic equipment;</p> <p>small, broken down particles of synthetic and natural materials, arrive at the site through the same displacement effects associated with mechanical, human, animal and natural actions. Detritus includes dust, mud, soil, grit, gravel, stones, rotted leaf and vegetable, residues and fragments of twigs, glass, plastic and other finely divided materials. Leaf and blossom falls are to be regarded as Detritus once they have substantially lost their structure and have become mushy or fragmented;</p>
Discriminatory Change in Law	<p>a Change in Law, the terms of which apply expressly to:</p> <ul style="list-style-type: none"> a) the Contract and not to similar projects procured by the Council; and/or b) the Contractor and not to other persons;
Disclosed Data	<p>any data and any other written information, data and documents including that made available or issued to the Contractor or any Contractor Party in connection with the Contract by or on behalf of the Council whether before or after the execution of this Contract including any data originating from any previous Council supplier;</p>
Disposal Facility	<p>the site to which the Council will direct the Contractor to deliver Contract Waste;</p>
Dispute Resolution	<p>the procedure set out in Clause 37 (Dispute Resolution);</p>
Diversion	<p>means the diversion of Collected Waste from Residual Waste treatment and disposal through Re-use, Recycling and Composting which is NI 192 compliant and Divert and Diverted shall be similarly construed;</p>
DPA	<p>the Data Protection Act 1998;</p>
Educational Establishments	<p>schools, colleges and universities;</p>

Effective Date	The date on which the Conditions Precedent are satisfied or waived in accordance with the provisions of Clause 3;
Enhanced Areas	Areas, mainly of highway, requiring cleaning at greater frequencies than the surrounding areas. The extent of highway and other land included within each enhanced area are detailed within this Contract in Appendix B4;
Environment	includes the meaning given in the EPA and its regulations and includes human beings, material assets, cultural heritage, flora, fauna, soil, geology, water, air, climate, the landscape, land uses and resources;
Environment Laws	all Legislation, Guidance, Common Law or Judicial Decisions or Codes of Practice or guidance notes having legally binding effect which are from time to time subsisting or in force which have as a purpose or effect the protection of the Environment and/or the prevention of harm thereto and/or the provision of remedies in respect of such harm;
Environmental Permit	means the permit required and issued by the Environmental Agency pursuant to the Environmental and Permitting (England and Waste) Regulations 2010 SI 2010 No.675;
EPA	the Environmental Protection Act 1990;
Estimated Revised Costs	in relation to Clause 22 (Variations for Change in Service) means the aggregate of any estimated increased operating costs and financing costs less the aggregate of any reduced operating costs and financing costs;
Execution Date	the date of this Contract;
Expiry Date	8 years from the Service Commencement Date unless extended for one or two periods of up to 10 years in each case pursuant to Clause 9.2, in which case the Expiry Date shall be amended to

	refer to the Expiry Date as extended pursuant to each extension;
Expiry Plan	a plan related to the steps to be taken on or prior to the Termination or expiry of this Contract as further detailed in Schedule 7;
Extent of Highway	as generally recorded on definitive plans presently held by the Council. In the absence of such plans the decision of the Council on the extent of highway will be final;
Facility	means any depot or waste management facility (provided, or to be provided, used or operated by the Contractor) as required to enable the Contractor to comply with its obligations under this Contract. For the avoidance of doubt this shall include any third party facility used for the purpose of the Contract;
First Contract Year	from the Services Commencement Date to [];
Fly Tipped Waste	means all materials deposited illegally on land as nominated by the Council. Without prejudice to the generality of the aforesaid such deposits can be of building rubble, or the contents of skips, etc. Abandoned vehicles shall not constitute Fly Tipped Waste;
Force Majeure Event	the occurrence after the date of the Contract of: <ul style="list-style-type: none"> a) war, civil war, riot, civil unrest, civil commotion, lockouts, armed conflict or terrorism; or b) nuclear and radioactive explosion and contamination, chemical or biological contamination unless the source or cause of the contamination is the result of actions of the Contractor; or c) pressure waves caused by devices travelling at supersonic speeds; or civil unrest directly resulting in the prevention of

	the delivery of vehicle fuel to petrol stations and storage depots nationwide; or
	strikes or lockouts beyond the Contractor's reasonable control excluding a strike or lockout exclusively affecting the Contractor's workforce;
	acts of nature including seriously adverse weather conditions, fire, flood, storm, hurricane or other natural disaster;
	civil defence and emergencies as defined in Clause 14,
	which directly causes either party (the "Affected Party") to be unable to comply with all or a material part of its obligations under this Contract;
Frequencies	subject to any limitations imposed by the Contract, the Contractor will be given some latitude in devising programmes to achieve the specified frequencies. Following approval of the programmes, however, he will be required to follow the programmed days consistently except as permitted below or as otherwise agreed by the Supervising Officer. More detailed descriptions of the required frequencies are included under the appropriate descriptions of the Services;
Garden Waste	unshredded grass cuttings, hedge clippings, tree prunings, weeds, dead plant material, soil bound roots, leaves, other vegetation;
General Change in Law	a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;
Good Industry Practice	the exercise of that degree of skill, diligence, prudence, operating practice and foresight which would reasonably and ordinarily be expected from a skilled and experienced person of the appropriate profession or practice seeking in good faith to comply with their contractual obligations, complying with all applicable Legislation, Consents, Guidance, directions

	and codes of practice and engaged in the same or similar type of undertaking and under the same or similar circumstances and conditions as that in which the relevant matter arises;
Guidance	any applicable guidance or directions with which the Council or the Contractor is bound to comply in the provision of the Services, including but not limited to the Council's Standing Orders/Constitution;
Hazardous Waste	waste that is hazardous as defined by the Hazardous Waste Directive 91/689/EEC 2005;
Health and Safety Laws	all Legislation, Guidance, common law or judicial decisions or codes of practice or guidance notes having legally binding effect which are from time to time subsisting or in force which have as a purpose or effect the protection and enhancement of health and safety at work of those who work for the Contractor or the Council whether as employees or contractors or agents or who are in any way affected by the carrying out of the Services;
Holidays	the days defined as holidays or any other day that may be declared a holiday from time-to-time and notified in writing to the Contractor by the Supervising Officer. Contractors should note that provision of many of the Services will be required on holidays;
Household Waste	shall have the meaning given in The Controlled Waste Regulations 2012;
Intellectual Property	includes all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, programme or other software (including source

	and object codes) specification, plan drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark style, or other matter or thing, existing or conceived, used, developed or produced by any person;
Lake Terrace Depot	means the Lake Terrace Depot and Waste Transfer Station;
Law / Legislation	any United Kingdom legislation or any legislative act of the Council of the European Union or the Commission or the European Communities (or any interpretation of any of the foregoing) which (without further enactment) has legal effect within the United Kingdom;
Litter	litter is most commonly assumed to include materials, often associated with smoking, eating and drinking, that are improperly discarded and left by members of the public, or are spit during business operations as well as waste management operations;
Litter Picking	the loosening, collection and removal of all items of Litter, other than grit, dust, leaves, blossom and those contained in litter bins from the defined areas by any means approved by the Supervising Officer;
Maintenance Margin	a paved strip adjacent to a carriageway of insufficient width for use as a footway (usually up to 0.5m) and usually located between a kerb line and the highway boundary to allow for the overhang of vehicles;
Management Information	the written reports, data, documents and other information evidencing the Contractor's performance of the Services as set out in Schedule 15;
Mechanical Sweeping	the sweeping of paved surfaces and the scouring of associated channels by use of approved

	mechanical sweepers;
Missed Collection	a collection from a Service User which is not completed on the designated collection day as identified in the Contractor's Collection Schedule;
Mixed Dry Recyclables	means the materials targeted for Recycling, which will include but is not limited to: <ul style="list-style-type: none"> • Plastic bottles; • Paper including shredded paper and envelopes; • Cardboard; • Glass bottles and jars; • Metal food and drinks cans, foil and aerosols; • Cartons;
Mobilisation Plan	has the meaning given in paragraph 4.2.1 of the Specification;
Mowing Strip	a paved strip of insufficient width for use as a footway (usually up to 0.3m) and usually located between a grassed verge and a boundary or feature to allow for the overhang of a mowing machine;
Necessary Consents	means all rights, agreements, approvals, consents, permits, licences, facilities, permissions and certificates lawfully and necessarily required from any competent regulatory or licensing authority or any other persons whatsoever in connection with the Services and otherwise for carrying out and completion of the Services in accordance with this Contract as varied from time-to-time which for the avoidance of doubt shall include Environmental Permits;
No Fault Event	a Force Majeure Event or any situation where the Contractor is acting under the direct instruction of the Council;
Non-Contract Waste	means any Waste other than Contract Waste;
Non-Paved Paved Highway Surface	the whole of non-paved area between the

	highway boundaries, including highway verges, service strips, planted areas, shrub beds, hedges at the highway boundary and highway embankments;
Notifiable Health and Safety Incident	a reportable incident or occurrence as defined in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 and HSE Guidance NoteHSIS1 (rev 3);
Noxious Waste	means waste classified in the European Waste Catalogue under EWC codes 18.01.01 to 18.01.10 inclusive and 18.02.01 to 18.02.08 inclusive;
Operating Licence	means a licence required pursuant to The Goods Vehicle (Licensing of Operators) Act 1995 and regulations;
³ Parent Company Guarantee	the parent company guarantee in substantially in the form annexed at Schedule 11 (Parent Company Guarantee);
Parent Company	[] plc a company incorporated under the Laws of England and Wales with registered number [] having its registered office at [];
Parties	the Council and the Contractor;
Paved Highway Surface	the whole paved area between the highway boundaries including carriageways, junctions, turning-heads, footways, footpaths, cycleways, pedestrian areas, central reservations (including pedestrian refuges, road splitters, the paved areas of roundabout islands and other islands), channels, maintenance margins, mowing strips, vehicular footway and verge crossings, parking areas within the highway, accessible paved surfaces under, within and around street furniture of any description, and any other areas directed

³ If required.

Pension Scheme	by the Supervising Officer; the Leicestershire County Council Local Government Pension Scheme;
Performance Management Framework	means the performance management framework contained in Part 3 of the Specification;
Performance Standards	means the criteria set out in Table 1 Part 3 of the Specification;
Personal Data	personal data as defined in the DPA which is supplied to the Contractor by the Council or obtained by the Contractor in the course of performing the Services;
Plant	means the plant, machinery and equipment to be provided and/or maintained by the Contractor pursuant to this Contract (which include Contractor Assets and Council Assets in the Contract);
Plastic Sacks	plastic bags used for the storage of Household Waste;
PPE	Personal Protective Equipment;
Prohibited Act	<p>a) offering, giving or agreeing to the Council or any other public body or to any person employed by or on behalf of the Council or any other public body any gift or consideration of any kind as an inducement or reward:</p> <p>i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Council;</p> <p>ii) For showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;</p> <p>b) entering into this Contract or any other contract with the Council in</p>

connection with which 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 any 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:

d) under the Bribery Act 2010;

e) under Legislation creating offences in respect of fraudulent acts; or

f) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Council; or

g) defrauding or attempting to defraud or conspiring to defraud the Council,

provided that the Contractor may pay proper commission or bonus to its employees within the agreed terms of their employment;

Qualifying Change in Law

a) a Discriminatory Change in Law to the extent that where a Discriminatory Change in Law occurs the Contractor shall bear the consequences of the impact of any Capital Expenditure arising from the Discriminatory Change in Law during the Contract Period; and/or

b) a Specific Change in Law;

which was not foreseeable at the date of this Contract. (For the avoidance of doubt the effects of Waste Strategy 2007 (England) and the Landfill Directive 1999/31/EC as far as they relate to recycling are intended by the parties to be included as a Qualifying Change in Law to the extent that their effect requires the

	Contractor and/or the Council to propose any variations to the Contract);
Receptacles	wheeled bins, sacks or other containers used for the storage of Household Waste;
Recovery	the re-use, recycling or composting of any waste;
Rectification Notice	a notice from the Council to the Contractor in accordance with Clause 16 requesting the Contractor to prepare a Rectification Plan;
Rectification Plan	a plan prepared by the Contractor which addresses the matters raised by the Council in a Rectification Notice (as agreed or determined in accordance with Clause 16);
Recyclable Waste	any waste that can be readily Recovered;
Recycled	means reprocessed in a production process for the original purpose, or for other purposes but excluding energy recovery and Composting and that can be used in the calculation of NI 192 and “Recycling” and “Recyclable” shall be construed accordingly;
Relevant Authority	any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry official or public or statutory person of the government of the United Kingdom or of the European Union;
Relevant Land	in general, relevant land will have the same meaning as in the Environmental Protection Act 1990, being land, other than highway, owned by the Council which is open to the air and to which the public are entitled or permitted to have access. However, for the purposes of this Contract some additional areas of land, which may or may not be owned by the Council, have been designated as relevant land;
Relevant Tax Liability	in respect of a payment on termination that the Contractor shall be regarded as having a

	<p>“Relevant Tax Liability” if:</p> <ul style="list-style-type: none"> a) it has a liability for tax in consequence of or in respect of a termination payment: or b) it would have had a liability for tax within paragraph (a) above but for the utilisation of a tax relief other than a tax relief derived from the Contract;
Replacement Contractor	any third party contractor appointed by the Council to supply any services which are substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of this agreement;
Residual Waste	Contract Waste collected by the Council but not segregated for Recycling or Compositing;
Re-use	means items removed from the waste stream for their original or different purpose without processing or treatment in a waste recovery operation (other than for repairing or refurbishing) and that can be used in the calculation of NI 192 and Reuse and Reusable should be construed accordingly;
RIDDOR	the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (as amended);
Schedule 2 Premises	schools, colleges and civic facilities such as village halls;
Service	means the scope of Services as described in the Specification;
Service Charge	means the full roll out of new or amended collection systems, which must be implemented within 12 months of the Service Commencement Date;
Service Commencement	the commencement of the Services;
Service Commencement Date	00:01 am on 1 October 2018

	at which time Service Commencement shall occur in accordance with Clause 9 (Duration of Contract) subject to satisfaction of all conditions precedent;
Service Delivery Plans	each and every plan contained or referred to in the submissions contained at Schedule 5;
Service Period	the period specified in Clause 9 (Duration of Contract);
Service Strip	a special type of highway verge used on some residential developments in conjunction with shared vehicular/pedestrian carriageways. These strips are usually 1.8m wide and cover statutory undertakers' apparatus. They are usually laid out to appear to be part of an open plan front garden, with only minimal demarcation of the highway boundary;
Service User	means any person producing Household Waste [or Commercial Waste];
Services	the scope of the services to be provided under this Contract and further specified in Clause 2 and Schedule 10 below in particular, including other related relevant statutory duties and "Service" shall be continued accordingly;
Shopping Frontages	for the purposes of the Contractor, shopping frontages are areas of privately-owned and/or occupied forecourts outside but adjacent to public highways which are to be cleaned to the same standard and frequency as the adjacent highway. Contractors are advised that the areas defined as shopping frontages may include land within the curtilage of properties other than shops;
Side Waste	means all the Waste placed for collection at the side of or on top of, but outside, a normal Receptacle;
Specific Change in Law	any Change in Law which specifically refers to the provision of a service being the same as or

	similar to the Service or to the holding of shares in companies whose main business is providing a service being the same as or similar to the Service;
Specification	the documents attached at Schedule 2;
Staff	any employee, worker or agent of, or other person from time-to-time engaged or employed by the Contractor or any Sub-Contractor in connection with the provision of the Service;
Street	a general term incorporating some or all items (1) to (5) above;
Street Washing	the use of high powered washing equipment to remove, stubborn materials, paint, gum or stains from highways or other surfaces (including walls). Chemicals if added to the water wash must be of an approved nature;
Sub-Contractor	A person to whom the Contractor sub-contracts the whole or part of the provision of the Services in accordance with the Contract and/or any sub-contractor of the Contractor of any tier, and references to "Sub-Contract" and "Sub-Contracting" shall be construed accordingly;
Sweeping	the loosening, collection and removal of all items of litter other than those contained in litter bins, from paved surfaces within the defined Areas, by any means approved by the Supervising Officer. Sweeping will normally entail brushing and shoveling and/or suction collection. Sweeping shall include washing where this is necessary to remove deposits which cannot otherwise be satisfactorily removed;
Task	a task or operation forming part of the Services as set out in the ITT or otherwise;
Tax	any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of the Contract and whether imposed by

	a local, governmental or other Relevant Council in the United Kingdom or elsewhere;
Tenderers	the entity/consortia that have been invited to submit a response to the ITT;
Termination Date	any date of early termination of this Contract in accordance with Clause 26 (Termination);
The Code	<i>The Code of Practice on Litter and Refuse</i> issued under Section 89 of the Environmental Protection Act 1990 and published by the Department of Environment, Food and Rural Affairs in 2006 or any subsequent amendments;
Third Party Sites	means Facilities deployed or used by the Contractor to deliver the Services that are delivered by a third party through a sub-contract or other arrangement;
Third Sector	voluntary or community organizations, including not-for-profit organisations, social enterprises and charities;
Third Sector Engagement Plan	means the plan required by paragraph 7.2.1 of the Specification;
Trade Waste	“commercial” and “industrial” waste as those terms are defined in Section 75 of the EPA and regulations made thereunder;
Transfer Date	the date on which a relevant transfer of an undertaking for the purposes of the Transfer of Undertaking (Protection of Employment) Regulations 2008 occurs and also means the date on which for the purposes of Clause 24 the Eligible Employees will transfer to the Contractor those persons employed by the Council immediately before the Commencement Date;
Transferred Employees	those persons employed by the current service provider Biffa Municipal Waste Limited immediately before the Commencement Date, listed at Schedule 8 (TUPE List) who will transfer

	to the employment of the Contractor;
Variation	a variation issued in accordance with Clause 22 (Variations for Change in Service);
VAT	any value added tax;
Vehicles	means: <ul style="list-style-type: none"> (a) any waste collection vehicle used for the collection of Contract Waste which may be either Contractor Vehicles or Council Vehicles; and (b) any street cleaning vehicle used for the cleansing of roads and streets as required by this Specification;
Warning Notice	a notice served by the Council on the Contractor in accordance with Clause 16.4;
Waste	waste as defined in the Waste Framework Directive 2008/98/EC;
Waste Transfer Station	a Disposal Facility that 'transfers' waste from its point of tipping to the point of disposal;
WCA	waste collection authority, the powers and duties of which are set out in the EPA (or its successors);
WDA	a waste disposal authority, the powers and duties of which are set out in the EPA and, unless otherwise stated means for the purposes of this Contract, Leicestershire County Council;
WEEE	shall have the meaning given in The Waste Electrical and Electronic Equipment Regulations 2006;
Working Day	[];
Zones	these are as shown on plans which indicate highways and other areas of land within each zone. They can be found detailed in the Appendices. EPA Zones 1 and 2 will generally have the same meaning as Category Zones 1 and 2 in the Code. However, where the contract documents are at variance with the Code the

contract documents will take precedence. It should be noted that this document defines litter different to the Code.

- 1.2. In this Contract, except where the context otherwise requires:
 - 1.2.1. the masculine includes the feminine and vice-versa;
 - 1.2.2. the singular includes the plural and vice-versa;
 - 1.2.3. a reference in this Contract to any Clause, sub-Clause, paragraph, Schedule or annex is, except where it is expressly stated to the contrary, a reference to such Clause, sub-Clause, paragraph, Schedule or annex of this Contract;
 - 1.2.4. any reference to this Contract or to any other document shall include any permitted variation, amendment, or supplement to such document;
 - 1.2.5. any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
 - 1.2.6. references to any documents being “in the agreed form” means such documents have been initialled by or on behalf of each of the parties for the purpose of identification;
 - 1.2.7. a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees; and
 - 1.2.8. headings are for convenience of reference only.
- 1.3. The language of this Contract is English. All correspondence, notices, drawings, design data, test reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter in accordance with, or for purposes envisaged by, this Contract shall be in English.
- 1.4. References to any agreement or document include (subject to all relevant approvals and any other provisions of this Contract concerning amendments to agreements or documents) a referenceto

that agreement or document as amended, supplemented, substituted, novated or assigned.

- 1.5. References to a public organisation (other than the Council) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Council) shall include their successors or assignees.
- 1.6. The words in this contract shall bear their natural meaning. The parties have had the opportunity to take legal advice on this Contract and no term shall, therefore, be construed contra proferentem.
- 1.7. Reference to “parties” means the parties to this Contract and references to “a party” means one of the parties to this Contract.
- 1.8. In construing this Contract, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Contract and accordingly general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 1.9. All of the Contractor’s obligations, duties and responsibilities shall be construed as separate obligations, duties and responsibilities owed to the Council and to be performed at the Contractor’s own cost and expense.
- 1.10. Where this Contract states that an obligation shall be performed “no later than” or “within” a prescribed number of Working Days after a stipulated date or event (the “base date”) or “by” a date which is a prescribed number of Working Days after a base date, the latest time for performance shall be 5pm on the last Working Day for performance of the obligations concerned.
- 1.11. Where this Contract states that an obligation shall be performed “no later than” or “by” a prescribed number of Working Days before a base date or “by” a date which is a prescribed number of Working Days before a base date, the latest time for performance shall be noon on the last Working Day for performance of the obligations concerned.
- 1.12. The Contract is entered into pursuant to the obligations of the Council under (inter alia) sections 45, 46, 47, 48 and 49 of the EPA and the definitions and interpretation provided in that Act apply for the

interpretation of the Contract save that where the Contract provides a definition that definition shall supplement any statutory definition of the same expression.

- 1.13. This Contract is without prejudice to Council's powers and responsibilities as Local Planning Authority, WCA, Environmental Health Authority, or any other capacity whatsoever, or the exercise of such powers by the Council's officers.
- 1.14. The management of the Contract by the Council will be supported by regular meetings between the Authorised Officer, and/or their representative, and the Contract Manager, and/or their representative.
- 1.15. References to amounts expressed to be "indexed" are references to such amounts multiplied by the value of CPI most recently published prior to the end of the relevant Contract Year.

2. PROVISION OF SERVICES

2.1. Services

The Contractor must at all times perform and procure that the Services are (in the following order of precedence) performed:

- 2.1.1. in accordance with:
 - 2.1.1.1. the terms and conditions of the main body of this Agreement;
 - 2.1.1.2. the Specification set out in Schedule 2;
 - 2.1.1.3. the Service Delivery Plans set out in Schedule 5;
 - 2.1.1.4. the Payment provisions set out in Schedule 4;
 - 2.1.1.5. the Management Information obligations set out in Schedule 15; and
 - 2.1.1.6. the other schedules of this Agreement.
- 2.1.2. in accordance with Good Industry Practice;
- 2.1.3. in accordance with the Contract Delivery Plans;
- 2.1.4. in accordance with all environmental and other laws, including but not limited to the provisions of the EPA, the Landfill Directive 1999/31/EC, the Waste Framework Directive 2008/98/EC and the Waste (England & Wales) (Amendment) Regulations 2012;
- 2.1.5. in accordance with the terms of all relevant licences and permissions whether issued by the Council in

pursuance of its statutory role or otherwise, including with in relation to the use and operations of vehicles and the transportation and storage of Waste.

- 2.1.6. in a manner that does not cause damage to any property (save to the unavoidable extent necessary for the performance of the Services);
- 2.1.7. in a manner that is consistent with all current, relevant health and safety precautions necessary for the protection of itself, its staff, its Sub-Contractors, the Council's employees and any other persons invited onto or visiting the Contractor's sites;
- 2.1.8. in compliance with all Legislation and the Consents in so far as such are applicable;
 - 2.1.8.1. so as to minimise inconvenience and disruption to the extent reasonably practicable to:
 - 2.1.8.2. the Council, its employees, staff and personnel;
 - 2.1.8.3. any third party suppliers;
 - 2.1.8.4. any lawful visitor on any of the Contractor's sites (including the Lease Premises); and
 - 2.1.8.5. service users.
- 2.1.9. in accordance with the reasonable requirements of the authorised Officer (to the extent that they do not amount to a Variation) nor cause any disruption or additional expense to the Contractor (unless specifically provided otherwise in this Contract);
- 2.1.10. whilst taking all proper care over those Assets as listed in Schedule 6 which are to be utilised by the Contractor in the performance of the Services and replacing those Assets if and when they require to be replaced in order to maintain the provision of the Services in accordance with the requirements of this Agreement;
- 2.1.11. in accordance with all relevant policies of the Council as communicated to the Contractor from time to time;
- 2.1.12. with suitable and appropriate equipment including vehicles and waste handling equipment.

3. CONDITIONS PRECEDENT

- 3.1. The parties must use their reasonable endeavours and, where necessary, assist one another to procure the satisfaction of the Conditions Precedent to this Contract and in each case must bear their own costs.
- 3.2. On the date that any of the Conditions Precedent listed in Part 1 of Schedule 1 (Conditions Precedent) have been satisfied the Contractor is to notify the Council.
- 3.3. On the date that any of the Conditions Precedent listed in Part 2 of Schedule 1 (Conditions Precedent) have been satisfied the Council is to notify the Contractor.
- 3.4. Immediately following notification of the last Condition Precedent to be satisfied pursuant to Clause 3.2 or 3.3 above, or upon waiver or deferral of all outstanding Conditions Precedent, the Authorised Officer shall issue a Certificate of Satisfaction in a form noting dates on which the Conditions Precedent were satisfied or waived and recording the Effective Date.
- 3.5. No Condition Precedent shall be waived or deferred unless evidenced by notice in writing served by:
 - 3.5.1. in the case of Conditions Precedent listed in Part 1 of Schedule 1 (Conditions Precedent), the Contractor; and
 - 3.5.2. in the case of Conditions Precedent listed in Part 2 of Schedule 1 (Conditions Precedent), the Council,
 - 3.5.3. in each case signed by the Authorised Officer if served by the Council and by the Contractor's Representative if served by the Contractor.
- 3.6. If any of the Conditions Precedent have not been fulfilled or waived by the Council twenty (20) Working Days before the Service Commencement Date or such other date as may be agreed in writing between the parties, this Contract lapses and is of no further force and effect and the parties have no further rights against each other and (subject only to Clause 26 (Termination)) the parties are released from all further obligations under this Contract but without prejudice to any rights or obligations which may already have accrued prior to such date.

4. POWERS OF THE CONTRACTOR

Before or immediately after the satisfaction of Clause 3 (Conditions Precedent) the Contractor shall deliver to the Council a true and complete copy (certified as such by the company secretary to the Contractor) of minutes of a meeting of the Board of the Contractor, resolving to enter into the Contract.

5. EXECUTION AND DELIVERY OF DOCUMENTS

- 5.1. On or prior to execution of this Contract the Contractor shall deliver to the Council the documents referred to in Schedule 13 (List of Documents for Completion) (unless the requirement to deliver any such document is waived by the Council by written notice to the Contractor).
- 5.2. The Contractor shall perform its obligations under, and observe all of the provisions of, the Contract Documents to which it is a party and shall not:
 - 5.2.1. terminate or agree to the termination of all or part of any Contract Document;
 - 5.2.2. make or agree to any material variation of any Contract Document;
 - 5.2.3. in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Contract Document; or
 - 5.2.4. enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Contract Document, unless the proposed course of action (and any relevant documentation) has been submitted to the Authorised Officer for review and there has been no objection within twenty (20) Working Days of receipt by the Authorised Officer of the submission of the proposed course of action (and any relevant documentation), or such shorter period as may be agreed by the parties and the Contractor has complied with its obligations on assignment and sub-contracting under Clause 25 (Assignment and Sub-Contractors).

- 5.3. Without prejudice to the provisions of this Clause, if at any time an amendment is made to any Contract Document, or the Contractor enters into a new or supplemental Contract Document (or any agreement which affects the interpretation or application of any Contract Document), the Contractor shall deliver to the Council a conformed copy of each such amendment or agreement within ten (10) Working Days of the date of its execution or creation, certified as a true copy by an officer of the Contractor.

6. CONFLICTS OF AGREEMENT

- 6.1. Except as otherwise expressly provided the Contract Documents are to be taken as mutually explanatory of one another.
- 6.2. In the event of any inconsistency between this Contract and any provision in any of the other Contract Documents the provisions of this Contract shall always prevail.

7. COUNCIL AND THIRD PARTY DATA

- 7.1. Subject to Clause 11 (Warranties), although provided in good faith, the Council shall not be liable to the Contractor for and the Contractor shall not seek to recover from the Council (or from any Council Party) any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Disclosed Data by, or on behalf of, the Contractor or any Contractor Party.
- 7.2. Subject to Clause 11 (Warranties), the Council gives no warranty or undertaking of whatever nature in respect of the Disclosed Data and, specifically (but without limitation), the Council does not warrant that the Disclosed Data represents all of the information in its possession or power (either during the conduct of the tender process for the Contract or at the time of execution of this Contract) relevant or material to or in connection with the Contract or the obligations of the Contractor under this Contract or under any of the Contract Documents. Also, subject to Clause 11 (Warranties) the Council shall not be liable to the Contractor in respect of any failure to disclose or make available to the Contractor (whether before, on or after the execution of this Contract) any information, documents or data, nor any failure to review or to update the Disclosed Data, nor any

failure to inform the Contractor (whether before, on or after the execution of this Contract) of any inaccuracy, error, omission, defects or inadequacy in the Disclosed Data.

7.3. The Council will use all reasonable endeavours to ensure that all information supplied by third parties is complete and accurate, but the Council makes no warranties in this respect.

7.4. Subject to Clause 11 (Warranties), the Contractor acknowledges and confirms that:

7.4.1. it has conducted its own analysis and review of the Disclosed Data and has, before the execution of this Contract, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Disclosed Data upon which it places reliance; and

7.4.2. it shall not be entitled to and shall not (and shall procure that the Contractor Party shall not) make any claim against the Council or any Council Party whether in contract, tort or otherwise including, without limitation, any claim in damages, for extensions of time or for additional payments under this Contract on the grounds:

7.4.2.1. of any misunderstanding or misapprehension in respect of the Disclosed Data; or

7.4.2.2. that incorrect or insufficient information relating to the Disclosed Data was given to it by any person, whether or not a Council Party.

Nor shall the Contractor be relieved from any obligation imposed on, or undertaken by, it under this Contract on any such ground.

8. RESCISSION

If, between the date of this Contract and the Service Commencement Date, the Council:

8.1. becomes aware that the Contractor has committed an anticipatory breach of this Contract which is material in relation to the provision of the whole or substantially the whole of the Contract, or

8.2. becomes aware of material misleading warranties,

the Council may rescind this Contract and recover from the Contractor its costs in or about the letting of this Contract (including but not limited to management and administration costs).

9. DURATION OF CONTRACT

9.1. This Contract and the rights and obligations of the parties to this Contract shall take effect and shall commence on the Service Commencement Date and terminate on the earlier of:

- 9.1.1. the Expiry Date; or
- 9.1.2. the Termination Date.

9.2. Option to Extend

9.2.1. The Council shall have the option, at its entire discretion, to extend this Contract in whole or in part by up to two further periods up to but not exceeding ten (10) years in each case. The option shall be exercisable by the Council serving the Contractor with written notice to that effect at any time not less than eighteen (18) months prior to the Expiry Date or the extension.

9.2.2. For the purposes of this Clause 9.2 time shall be of the essence.

10. PARENT COMPANY GUARANTEE

10.1. If the Contractor is or becomes a subsidiary company within the meaning of section 1159 of the Companies Act 2006, it shall provide a Parent Company Guarantee substantially in the form annexed at Schedule 11 (Parent Company Guarantee) by its ultimate holding company or companies (as defined by the said section 1159) to secure the due performance by the Contractor of its obligations to the Council.

10.2. Unless and until some other form is specified, the form of guarantee set out in Schedule 11 (Parent Company Guarantee) shall be the relevant specified form for the purposes of the Contract.

11. WARRANTIES

11.1. 11.1 The Contractor shall be deemed to have:

- 11.1.1. satisfied itself as to the Assets to which it will acquire rights and the nature and extent of the risk assumed by it under this Contract; and
- 11.1.2. gathered all information necessary to perform its obligations under this Contract and other obligations assumed.
- 11.1.3. the Contractor shall not in any way be relieved from any obligation under this Contract not shall it be entitled to claim against the Council on grounds that any information, whether obtained from the Council (acting reasonably) or otherwise is incorrect or insufficient and shall make its own enquiries as to the accuracy of that information.

12. SERVICE REQUIREMENTS

12.1. Contractor's General Obligation

The Contractor shall or shall procure that:

- 12.1.1. the Contractor will display a mutually agreed logo on each of the vehicle providing the Services during the Service Period;
- 12.1.2. any of the Contractor's employees whose role provides an interface with members of the general public will wear on duty a uniform or badge of corporate identity which has been mutually agreed between the Council and the Contractor;
- 12.1.3. at all times it will act with "commercial prudence" which for the purposes of this Clause 12.1.5 shall be defined as a duty to act with all reasonable commercial care and prudence to ensure that:
 - 12.1.3.1. the Contractor remains a viable commercial entity and able to perform its obligations under the Contract;
 - 12.1.3.2. it does not incur any unnecessary expenditure, but no course of action shall be a breach of the duty if it is carried out pursuant to a requirement or request of the Authorised Officer or with his express consent in writing; and

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⁴ Provisions re Refuse Collection Vehicles to be agreed based on financing arrangements etc.

12.2. Sole Provision of Service⁵

Subject to the other terms of this Contract and the Council's trial contract for the Bagio Waste Disposal System, the Council shall not during the continuance of this Contract enter into a contract with any other person, company or organisation for the Service or any part thereof without the consent of the Contractor such consent not to be unreasonably withheld or delayed.

12.3. Waste Collection

Subject to the other terms of this Contract, the Council shall not, without the consent of the Contractor (such consent not to be unreasonably withheld or delayed) make any other arrangements with any other person for the collection of Waste.

12.4. Trade Waste

To provide a Trade Waste service if required, collected separately from Household Waste unless agreed by the Authorised Officer beforehand.

12.5. Ownership and Disposal of Contract Waste

12.5.1. For the avoidance of doubt, as between the Council and the Contractor, no title in Contract Waste received by or in the possession of the Contractor or any of its Sub-Contractors shall become and be deemed to be acquired by and in the ownership of the Contractor.

12.5.2. The Contractor shall transport Contract Waste received or collected by it under this Contract for disposal at licensed waste disposal sites in accordance with any Special Conditions and the Specifications or as otherwise directed by the Council.

12.6. Good Faith Obligations

Both parties will act in good faith towards each other in relation to all matters arising under this Contract and in particular (without failure to comply with the same amounting to a breach of Contract):

12.6.1. the Contractor will inform the Council fully and as soon as possible of any circumstances which might prejudice the Contractor's ability to provide the Service whether temporarily or permanently;

12.6.2. each party shall inform the other fully and as soon as possible of any circumstance which might reasonably lead to any

⁵ Depending upon final arrangements.

substantial change in the nature, composition or amount of Contract Waste or any other circumstance which might alter the burden of the obligations of each party under the Contract;

12.6.3. the Authorised Officer shall be given all information and other facilities he may reasonably require to ensure that the Contractor is fulfilling its obligations under the Contract;

12.6.4. the representatives of the parties appointed under Clause 36 (Representatives) shall hold regular meetings at no less frequent intervals than those specified in Clause 38 (Contract Relations Panel) in order to review the working of the Contract, to identify any way in which either party might be, or become, in breach of its obligations, and any necessary remedial action, and to resolve informally any problem arising as perceived by either party or its representative;

12.6.5. both parties will do all things reasonably within their power which are necessary or desirable to give effect to the spirit and intent of this Contract.

12.7. Reasonableness

Any act, omission, decision, requirement, agreement or any other step of any kind taken by either party or the Authorised Officer shall be so taken reasonably and in good faith and any reference (express or implied) to period, time, occasion, amount, price or any other matter shall be subject to the qualification of reasonableness, unless the context otherwise requires.

13. HEALTH AND SAFETY

13.1. The Contractor and any Sub-Contractor or any one of the Contractor Parties shall ensure that at all times they shall comply with Health and Safety Laws and shall take such precautions as are necessary to protect the health and safety of all persons employed by them or otherwise entitled to be at or are in the vicinity of the site of any work being carried out or Service being performed under this Contract.

13.2. The Contractor shall at all times retain a person to be responsible for the health and safety matters as required by Health and Safety Laws and notify full details of such person to the Council. Whilst on Council owned premises the Contractor shall require its employees, licensees

and visitors to comply with the lawful requirements of the Council's Safety Adviser. The Contractor shall provide and maintain, at all its premises, an accident book which shall be open to inspection by the Council's Safety Adviser, Authorised Officer or his representative.

- 13.3. The Contractor shall have regard to the Council's safety policy when preparing its own statement, a copy of which shall be supplied to the Contractor prior to the Service Commencement Date.
- 13.4. The Contractor shall from time to time as necessary carry out and prepare risk assessments in compliance with Health and Safety Laws in respect of all relevant parts of the Services and shall promptly supply a copy of such risk assessments to the Authorised Officer and shall at all times review such assessments, its policy and safe working procedures whenever necessary in the light of changing legislation, working practices, any Notifiable Health and Safety Incident, any accidents or similar events and shall notify the Authorised Officer of any consequent revisions to the risk assessments.
- 13.5. The Contractor shall promptly upon the occurrence of any Notifiable Health and Safety Incident or any breach of Health and Safety Laws notify the Authorised Officer in writing of the same and supply full details and information relating thereto.
- 13.6. The Contractor shall, if requested, provide information and all reasonable assistance at no less than twelve (12) monthly intervals from the Service Commencement Date to the Authorised Officer to enable a health and safety audit to be completed by the Council.

14. (NOT USED)

15. MAINTENANCE AND PROPERTY

- 15.1. The Contractor shall ensure on a continuing basis (and shall demonstrate the same to the Council) that at all times, its maintenance and operating procedures with regard to all equipment and Assets shall meet all relevant manufacturer's recommendations and are sufficient at all times to ensure that:

- 15.1.1. the Service is continuously available;

- 15.1.2. the Assets are handed back to the Council on the Expiry Date in good working condition, fair wear and tear excepted, complying with the requirements of this Clause.
- 15.2. Lease
 - 15.2.1. The Council will grant and the Contractor will enter into a Lease in the agreed form as set out in Schedule 14 for the premises known as Lake View Terrace Depot, Melton, LE13 0BZ on the terms contained therein, the duration of such lease to be related to the termination or expiration of this Agreement, such lease to be excluded from the provisions of Sections 24 to 28 of the Landlord and Tenant Act 1954.

16. PERFORMANCE MONITORING

- 16.1. Monitoring
 - 16.1.1. In carrying out any of the Services, the Contractor shall, and shall ensure that all Contractor Parties and any other persons for whom it is responsible shall, comply with the provisions of Schedule 4.
 - 16.1.2. The Contractor shall be responsible for monitoring its performance of this Contract during the Service Period in accord with the requirements of Schedule 15 (Management Information) in the manner and at the frequencies set out in Schedule 2 Part []. The Contractor shall provide the Authorised Officer with relevant particulars of any aspects of its performance which fail to meet the requirements of this Contract (unless otherwise notified in writing by the Council) including, in particular those as set out in Schedule 2 Appendix 2. The Council may at all reasonable times observe, inspect and satisfy itself as to the adequacy of the monitoring procedures (including without limitation carrying out sample checks).
- 16.2. Within three (3) Working Days of the end of each calendar month during the Service Period the Contractor shall provide the Authorised Officer with the Management Information.
- 16.3. Rectification Notice

16.3.1. Without prejudice to the Council's rights under Clause 26 (Termination) or Clause 27 (Step-in) or any other express rights under this Contract, if at any time:

16.3.1.1. the Contractor has committed any material breach of its obligations under this Contract;

16.3.1.2. the Contractor's performance of the Service has resulted in the deduction pursuant to Schedule 2 Appendix 2 of £[] (indexed) within any 3 monthly period or of []⁶ £[] within any six monthly period;]

16.3.1.3. the Contractor has failed to provide the Management Information in accordance with Clause 16.2 above;

16.3.1.4. a Notifiable Health and Safety Incident or breach of Health and Safety Laws has occurred; or

16.3.1.5. there have been justified Customer, Service User or Public Complaints of a repetitive or recurrent nature,

then the Council may serve a Rectification Notice on the Contractor setting out the matter or matters giving rise to such notice and containing a reminder to the Contractor of the implications of such notice. Any such notice shall state on its face that it is a "Rectification Notice".

16.3.2. Any Rectification Notice served by the Council in accordance with Clause 16.3.1 above shall be served by the Council within five (5) Working Days of receipt of the Management Information under Clause 16.2 above.

16.3.3. Following receipt of a Rectification Notice served on the grounds set out above the Contractor shall within five (5) Working Days provide a Rectification Plan to the Council.

16.3.4. The Contractor shall forthwith implement all actions and requirements of the relevant Rectification Plan.

16.4. Warning Notices

Without prejudice to the Council's rights under Clause 26 (Termination) or Clause 36 (Step-in) or any other express rights under this Contract, if at any time:

⁶ Subject to final agreed calibration of PMS.

- 16.4.1. the Contractor has committed any material breach of its obligations under this Contract;
- 16.4.2. the Contractor has failed to implement the requirements of a Rectification Plan in accordance with Clause 16.3 above;
- 16.4.3. the Management Information reveals that the Contractor's performance of any of the Services which have in the previous eighteen (18) months been the subject of a Rectification Notice have fallen below the Contract Standard to such an extent that the Authorised Officers (acting reasonably) does not consider it appropriate to issue a further Rectification Notice; or
- 16.4.4. a serious Notifiable Health and Safety Incident or breach of Health and Safety Laws has occurred; or
- 16.4.5. there have been serious and justified Customer or Public Complaints of a repetitive or recurrent nature,

then the Council may serve a Warning Notice on the Contractor setting out the matter or matters giving rise to such notice. Any such notice shall state on its face that it is a "Warning Notice" and contain:

- 16.4.5.1. a statement of what action or actions the Council requires the Contractor to undertake to remedy the matter in question and the timescale within such action or actions are required to be undertaken; and
- 16.4.5.2. a reminder to the Contractor of the implications of such notice.
- 16.4.6. Immediately upon receipt of a Warning Notice but in any event within the timescales stated in the Warning Notice the contractor shall take such steps as are necessary to comply with the Warning Notice.

16.5. Deductions

- 16.5.1. In addition to serving a Rectification Notice in accordance with Clauses 16.3.1.2 or 16.3.1.3 above the Council may in its absolute discretion make a monthly Deduction not to exceed £[].
- 16.5.2. In addition to serving a Warning Notice in accordance with Clause 16.4 the Council may make a monthly Deduction.

16.6. Increased Monitoring

Without prejudice to the Council's rights under Clause 26 (Termination) or Clause 27 (Step-in) or any other express rights under this Contract, if the Contractor received one or more Rectification Notices in any rolling six (6) month period in respect of any Service, the Council may give written notice to the Contractor that it will increase the level of its monitoring of the Contractor, or (at the Council's option) of the Contractor's monitoring of its own performance of its obligations under this Contract, in respect of the relevant service until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that it will perform (and is capable of performing) its obligation under this Contract, in which case, the following provisions shall apply:

- 16.6.1. any such notice to the Contractor shall specify in reasonable detail the additional measures to be taken by the Council or by the Contractor (as the case may be) in monitoring the performance of the Contractor;
- 16.6.2. if the Contractor (acting reasonably) objects to any of the specified measure on the grounds that they are excessive it shall notify the Council in writing within two (2) Working Days of the receipt of the measure objected to (and of any changes necessary in order to prevent prejudice to the Contractor's performance of its obligations under this Contract);
- 16.6.3. the measures to be taken by the Council and the Contractor (as the case may be) shall be agreed between the parties or, in the absence of agreement within three (3) Working Days of the council's receipt of the Contractor's objection, determined by the Authorised Officer; and
- 16.6.4. the Contractor shall bear its own costs and indemnify and keep indemnified the Council at all times from and against all reasonable costs and expenses (if any) incurred by or on behalf of the Council in relation to such increased level of monitoring (including an appropriate sum in respect of general staff costs and overheads).

17. PRICE AND PAYMENT MECHANISM

17.1 Contract Payment

- 17.1.1. In consideration of the Contractor carrying out its obligations under the Agreement the Council shall pay to the Contractor the Contract Payment as set out in Schedule 4 in accordance with this clause.
- 17.1.2. At the end of each calendar month, the Contractor shall submit to the Authorised Officer a statement in accordance with the procedure set out in Schedule 4. The Contractor shall seek the comments of the Council on the accuracy of the statement within 15 Working Days. The Authorised Officer shall have the option of agreeing the statement, or disputing the statement in whole or in part. In the absence of any comments from the Council (via the Authorised Officer or otherwise) the content of the statement shall be deemed to be acceptable.
- 17.1.3. Not less than 15 Working Days following the production of a statement and subject to any comments made by the Council under Clause 17.1.2 above, the Contractor shall submit to the Authorised Officer an electronic invoice in respect of the work forming part of the Services which has been completed by the Contractor during the previous calendar month in a format to be agreed between the parties in line with the requirements set out in Schedule 4, subject to any deductions imposed at the levels prescribed in Schedule 15 (Management Information).
- 17.1.4. Within 30 days of receipt of a valid invoice from the Contractor the Council shall be liable to pay the undisputed amount contained within the statement referred to in Clause 17.1.2 above as the Contract Payment subject always to the Dispute Procedure set out in Clause 17.3 below.
- 17.1.5. Taxes
- 17.1.5.1. The Council shall pay to the Contractor such VAT as may be chargeable by the Contractor in connection with the provision of the Services. The Contractor shall issue a tax invoice in respect thereof which clearly shows separately the amount of VAT chargeable.
- 17.1.6. Indexation

- 17.1.6.1. The Contract Payment shall be reviewed at the end of each Contract Year and shall be increased or reduced by a percentage equivalent to the percentage increase or reduction (if any) shown by the CPI since the start of that Contract Year and such increase or reduction shall take effect in respect of the 12 month period commencing on the relevant review date.
- 17.1.6.2. The indexation is calculated at the end of September each Contract Year to take effect on the following 1st April.
- 17.1.7. Audit
 - 17.1.7.1. The Contractor shall install and implement such apparatus and systems as the Authorised Officer may from time to time require to ensure that the Council is charged for and pays only such amounts as it is obliged to under the terms of the Agreement.
 - 17.1.7.2. The Contractor shall at all times maintain a full record on an open book basis of particulars of the costs of performing the Services and shall keep books of accounts in accordance with best accountancy practice with respect to the Services showing the following detail:
 - 17.1.7.2.1 administrative overheads;
 - 17.1.7.2.2 payments made to Sub-Contractors;
 - 17.1.7.2.3 capital and revenue expenditure.
 - 17.1.7.3. The Contractor shall permit records referred to in this clause 17.1.7 to be examined and copied by the Council and the Council's auditor and their Representatives.
 - 17.1.7.4. The records referred to in this clause shall be retained for a period of at least 6 years after the Termination Date.

17.2. Manner of Payment

17.2.1. All payments under this Contract shall be made in pounds sterling by electronic transfer of funds for value on the day in question to the bank account of the recipient (located in the United Kingdom) specified in the relevant invoice, quoting the invoice number against which payment is made.

17.3. Disputes

17.3.1. If either party (acting in good faith) disputes all or any part of the Contract Payment payable pursuant to Schedule 4 (Payment Mechanism), the undisputed amount of the Contract Payment shall be paid by the Council in accordance with Schedule 4 (Payment Mechanism) and the provisions of this Clause 17 shall apply. The parties shall use all reasonable endeavours to resolve the dispute in question within ten (10) Working Days of the dispute arising. If they fail so to resolve it, either party may refer the matter for resolution in accordance with Clause 37 (Dispute Resolution).

Following resolution of the dispute, any amount agreed or determined to have been payable shall be paid forthwith by the paying party to the other together with interest at the Default Interest Rate on such amount calculated in accordance with Clause 17.4 (Late Payments).

17.4. Late Payments

Each party shall be entitled, without prejudice to any other right or remedy, to receive interest of (2% above HSBC base rate) on any payment not duly made pursuant to the terms of this Contract on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.

17.5. Gratuities

The Contractor shall not, whether by itself or by any person employed by it to perform the Service, solicit any gratuity or tip or any form of taking money or reward, collection or charge for any of the service other than the Contract Payment or other bona fide charges approved by the Council.

18. BUSINESS CONTINUITY PLAN

In the event that the continued provisions of the Service is affected by an event concerning either party (whether or not such element is one of Force Majeure), then the Contractor shall comply with the provisions of the Business Continuity Plan which shall complement and be operated in harmony with the Council's Continuity Plan.

19. SET-OFF

The Contractor shall not be entitled to retain or set off any amount due to the Council by it, but the Council may retain or set off any amount owed to it by the Contractor under this Contract which is undisputed and which has fallen due and payable against any amount due to the Contractor under this Contract.

20. TAXATION

20.1. Value Added Tax

20.1.1. Sums payable to the Contractor pursuant to this Contract are exclusive of VAT.

20.1.2. Each party shall pay to the other party any VAT properly chargeable on any supply made to it under this Contract provided that it shall first have received from the other party a valid tax invoice in respect of that supply which complies with the requirements of Part III of the VAT Regulations 1995. The Contractor shall provide the Council with any information reasonably requested by the Council in relation to the amount of VAT chargeable in accordance with the Contract and payable by the Council to the Contractor.

20.1.3. The parties to this Contract will use their endeavours to structure this Contract and the transactions envisaged within it and the Contract Documents or other agreements which are referred to in it to procure the most economically advantageous result available by the use of legitimate measures to reduce the incidence of VAT and other Taxes, and the parties shall exchange information and advice from time to time in these respects and generally continue throughout the Service

Period to co-operate and take steps with this intent providing that it shall not be outside the Council's statutory powers to do so.

21. CHANGE IN LAW

- 21.1. The Contractor shall take all steps reasonably necessary to ensure that the Services are performed in accordance with the terms of this Contract following any Change in Law.
- 21.2. General Change in Law
The Contractor shall comply with any General Change in Law concerning the Contractor's performance of the Services at the Contractor's sole risk and cost.
- 21.3. Qualifying Change in Law
If a Qualifying Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:
 - 21.3.1. any necessary change in Service;
 - 21.3.2. whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;
 - 21.3.3. whether relief from compliance with obligations is required, including the obligation of the Contractor to achieve the Service Commencement Date;
 - 21.3.4. any Estimated Revised Costs that directly result from the qualifying Change in Law, in each case giving in full detail the procedure for implementing the change in Service.
- 21.4. As soon as practicable after receipt of any notice from either party under Clause 21.3 the parties shall discuss and agree the issues referred to therein and any ways in which either party can mitigate the effect of the Qualifying Change in Law.
- 21.5. If the parties agree to a change in the Services or where if the parties fail to agree, the Council instructs the contractor to vary the Contract to comply with the Qualifying Change in Law, the Variation shall go through the procedure for Council Change set out in Clause 22.1 of this Contract.

22. VARIATIONS FOR CHANGE IN SERVICE

22.1. Council Changes

22.1.1. The Council has the right to propose changes in Service in accordance with this Clause and Clause 21. If the Council requires a change in Service, it must serve a notice (a "Council Notice of Change") on the Contractor.

22.1.2. The Council Notice of Change shall:

22.1.2.1. set out the change in Service required in sufficient detail to enable the Contractor to calculate and provide an Estimated Revised Costs in accordance with sub-Clause 22.1.3 below;

22.1.2.2. require the Contractor to provide the Council within fifteen (15) Working Days of receipt of the Council (or such longer period as shall be agreed between the parties) Notice of Change with the Estimate (the "Estimate");

22.1.2.3. detail any estimated change in the value of material to be processed.

22.1.3. As soon as practicable and in any event within fifteen (15) Working Days after having received the Council Notice of Change, the Contractor shall deliver to the Council the Estimate. The Estimate shall include the opinion of the Contractor on:

22.1.3.1. any impact on any Service Commencement Date;

22.1.3.2. any impact on the provision of the Service;

22.1.3.3. any amendment required to this Contract and/or any Contract Document as a result of the change in Service;

22.1.3.4. any Estimated Revised Costs that result from the change in Service; and

22.1.3.5. the proposed method of certification of any construction or operational aspects of the Service required by the change in Service.

22.1.4. As soon as practicable after the Council receives the Estimate, the parties shall discuss and agree the issues set out in the Estimate. In such discussions the Council may modify the

Council Notice of Change, in which case the Contractor shall, as soon as practicable, notify the Council of any consequential changes to the Estimate.

22.1.5. If the parties cannot agree on the contents of the Estimate then the dispute will be determined in accordance with Clause 37 (Dispute Resolution).

22.1.6. As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to Clause 37 (Dispute Resolution), the Council shall:

22.1.6.1. confirm in writing the Estimate (as modified); or

22.1.6.2. withdraw the Council Notice of Change.

22.1.7. If the Council does not confirm in writing the Estimate (as modified) within ninety (90) Working Days of the contents of the Estimate having been agreed in accordance with sub-Clause 22.1.4 above or determined pursuant to sub-Clause 22.1.5 above, then the Council Notice of Change shall be deemed to have been withdrawn.

22.1.8. In the event that the Estimate has been confirmed by the Council, then the adjustment to the Contract Payment shall be determined in accordance with this Clause.

22.2. Contractor Change in Service

22.2.1. If the Contractor wishes to introduce a change in Service, it must serve a notice (a "Contractor Notice of change") on the Council.

22.2.2. The Contractor Notice of Change must:

22.2.2.1. set out the proposed change in Service in sufficient detail to enable the Council to evaluate it in full;

22.2.2.2. specify the Contractor's reasons for proposing the change in Service;

22.2.2.3. request the Council to consult with the Contractor with a view to deciding whether to agree to the change in Service, and, if so, what consequential changes the Council requires as a result;

22.2.2.4. indicate any implications of the change in Service;

22.2.2.5. indicate, in particular, whether a variation to the Contract Payment is proposed (and, if so, give a

- detailed cost estimate of such proposed change);
 - and
 - 22.2.2.6. indicate if there are any dates by which a decision by the Council is critical.
- 22.2.3. The Council shall evaluate the Contractor's proposed change in Service in good faith, taking into account all relevant issues, including whether:
 - 22.2.3.1. a change in the Contract Payment will occur;
 - 22.2.3.2. the change affects the quality of the Service or the likelihood of successful delivery of the Service;
 - 22.2.3.3. the change will interfere with the relationship of the Council with the third parties;
 - 22.2.3.4. the financial strength of the Contractor is sufficient to perform the changed Service;
 - 22.2.3.5. the change materially affects the risks or costs to which the Council is exposed.
- 22.2.4. As soon as practicable after receiving the Contractor Notice of Change, the parties shall meet and discuss the matter(s) referred to in it. During their discussions the Council may propose modifications or accept or reject the Contractor Notice of Change.
- 22.2.5. If the Council accepts the Contractor Notice of Change (with or without modification), the relevant change in Service shall be implemented within twenty (20) Working Days of the Council's written notice of acceptance, or as otherwise agreed by the Council, acting reasonably. Within this period, the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract or any relevant Contract document which are necessary to give effect to the Change in Service.
- 22.2.6. If the Council rejects the Contractor Notice of Change, it shall not be obliged to give its reasons for such a rejection.
- 22.2.7. Unless the Council's acceptance specifically agrees to an increase in the Contract Payment there shall be no increase in the Contract Payment as a result of a change in Service proposed by the Contractor.

- 22.2.8. If the change in Service proposed by the Contractor causes or will cause the Contractor's costs or those of a Sub-Contractor to decrease, there shall be a decrease in the Contract Payment in accordance with Schedule 4 (Payment Mechanism).
- 22.2.9. The Council cannot reject a change in Service which is unavoidably required in order to conform to a Change in Law at no cost to the Council.

23. EMPLOYEES AND TUPE

- 23.1. The Contractor is responsible for engaging in the performance of the Services sufficient persons of sufficient abilities, skills, knowledge, training, physical fitness, qualifications and experience for the proper performance of the Services and for ensuring that sufficient reserve staff are available to provide the Service at all times to cover periods of holidays, sickness, other absence and peaks to demand. The Contractor shall ensure that all employees involved in providing the Services, whether employees of the Contractor, its sub-contractors, or agents, shall be at all times properly and sufficiently trained and instructed in the task or tasks the employee has to perform, and the need to maintain the highest standards of courtesy and consideration to the public to promote and enhance the Council's image and reputation.
- 23.2. The Contractor shall accept full responsibility for and shall indemnify and keep indemnified the Council its other contractors and its agents and employees from and against all actions, proceedings, costs, claims, demands and liabilities, fines, judgments arising out of any failure by the Contractor or its Sub-Contractors including any failure to comply with the applicable legislation whether in respect of claims for breach of contract, loss of office, unfair or wrongful dismissal, redundancy, discrimination based on protected characteristics as defined under the Equalities Act 2010, loss of earnings, sickness, ill health, failure to consult employees or employee representatives, unlawful payments having been made to employees employed in connection with the provision of the Services or otherwise.
- 23.3. If requested to do so by the Authorised Officer, the Contractor shall provide to the Council any and all information considered relevant by the Authorised Officer whether in relation to its employees or otherwise to permit the Council to prepare the necessary documentation in respect of

any subsequent tendering or re-tendering of the Service. 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 doubt, 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 2008 (the “Regulations”) and any such information shall be provided at no cost to the Council.

- 23.4. The parties acknowledge that each of the Transferred Employees immediately before the Commencement Date will (to the extent that the Regulations require) transfer to the Contractor pursuant to the Regulations on the Commencement Date which shall be the “time of transfer” under the Regulations.
- 23.5. The Contractor shall indemnify and keep indemnified the Council against all actions, proceedings, claims, damages, demands, fines, penalties, expenses, legal remedies, compensation, court or tribunal orders, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to any claim or other recourse by any trade union, employee representatives or staff association in respect of all or any of the Employees arising from or connected with any failure by the Contractor to comply with its legal obligations to such trade unions, employee representative or staff associations on or after the Service Commencement Date.
- 23.6. The Contractor confirms that it is aware that the employees of Biffa Municipal Waste Ltd currently providing waste collections and disposal services to the Council may be subject to the terms of the Transfer of Undertakings (Protection of Employment) Regulations 2008 (“the TUPE Regulations”) as applying to this Contract, and the Contractor shall be deemed to have obtained for itself all necessary information as to risks, contingencies and all other circumstances influencing or affecting its tender. The Council will pass on such information as it can reasonably obtain related to such employees, but without obligation as to its accuracy or completeness.
- 23.7. The Contractor shall indemnify and keep indemnified the Council against all actions, proceedings, claims, damages, demands, fines, penalties,

expenses, legal remedies, compensation, court or tribunal orders, awards, costs and other liabilities whatsoever relating to any claim by any of the Transferred Employees made against the Council at any time which results or resulted from some act, event, matter or omission or circumstance which occurred or commenced on or after the Service Commencement Date.

- 23.8. At any time upon reasonable notice from the Authorised Officer or (where the request is occasioned by the termination of the Contract) forthwith and in any event upon the day which shall be not less than fifteen (15) months before the Contract shall expire by effluxion of time, the Contractor shall supply to the Council full, complete and accurate information as to the identity and terms and conditions of employment of all employees then currently engaged in the provision of the Services or any of them (whether or not employed by the Contractor) and shall warrant the accuracy of such information and shall forthwith notify the Council of any change in such information.

23.8.1. The Contractor undertakes to the Council that it will procure that the conditions of employment of any employee whose employment may be transferred to the Council or to a replacement service provider following termination of the Contract (or any of the Services to be provided there-under) shall not be varied (save for annual pay revisions in the ordinary course) after the Council shall have served notice to terminate all or any Service for any reason or where the Contract is due to expire by effluxion of time within fifteen (15) months thereof.

- 23.9. The Contractor shall employ or cause to be employed in and about the performance of the Services and in the superintendence thereof only such persons sufficient in number as are careful, skilled, trained and experienced to carry out the duties assigned to them.

- 23.10. The Contractor shall prior to engagement of any person in or about the provision of the Services who might be in contact with children or other vulnerable service users disclose to the Authorised Officer the names and addresses and sufficient information to enable proper checks to be made with the DBS or Disclosure Scotland and otherwise as appropriate all convictions of such employees and the Council may acting reasonably

require such employees to be removed from the provision of the Services.

- 23.11. The Authorised Officer shall, after consultation with the Contractor's Representative, be at liberty to object to and require the Contractor to remove from the Services any person employed by the Contractor in or about the execution of the Services or part thereof who in the reasonable opinion of the Authorised Officer is unsuitable or seriously misconducts himself or is incompetent or negligent in the performance of his duties or fails to conform with any particular provisions with regard to safety or persists in any conduct which is prejudicial to safety and health or is charged with or has been convicted of a criminal offence listed under Section 4(2) of the Rehabilitation of Offenders Act, 1974 and such persons shall not be again employed in the performance of the Services without the permission of the Authorised Officer and neither the Authorised Officer nor the Council shall be liable to the Contractor or to the employee in respect of any liability loss or damage occasioned by such removal and the Contractor shall fully indemnify the Authorised Officer and the Council against any claim made by such employee.
- 23.12. During the Service Period if any such employee has any conviction which has not been disclosed or any employee is under investigation for any offence then where the Contractor becomes aware at any time such matters shall be disclosed forthwith and the Council may acting reasonably require such employees to be removed from the provision of the Services.
- 23.13. If, owing to the nature of the Services, the Contractor's employees are exempt from the provisions of Section 4(2) of the Rehabilitation of Offenders Act, 1974, by virtue of the Rehabilitation of Offenders Act, 1974 (Exceptions) Orders 1975, then the Contractor shall use its reasonable endeavours to ensure that all such employees engaged in the provision of the Service shall provide information in accordance with the said Act and Order about convictions which would otherwise be spent under the provisions of the said Act.
- 23.14. Without prejudice to any other of the provisions hereof:
- 23.14.1. the Contractor shall have full and sole responsibility for compliance with each and every provision of the law concerning or affecting the employment of staff and without prejudice to the

generality of this obligation shall at all times be fully responsible for the payment of all income or other taxes, National Insurance contributions or levies or damages or compensation of any kind, relating to or arising out of the employment of any person employed by the Contractor and shall fully and promptly indemnify the Council in respect of any liability of the Council in respect thereof;

23.14.2. notwithstanding the provisions of sub-Clause 23.17.1 the Contractor shall be entirely responsible for the employment and conditions of service of the Contractor's employees and all matters incidental thereto and will fully and promptly indemnify the Council against all actions, costs, claims, proceedings whatsoever arising out of or in connection with such employment and conditions of service.

23.15. Without prejudice to any other obligations of the Contractor hereunder the Contractor shall ensure that its employees do not hold themselves out as employees of the Council and that they carry out their duties and behave in as quiet, discreet and orderly a manner and in such a way as to cause the least possible disruption to the routines and procedures of the Council's other functions and services as may reasonably be practicable having regard to the nature of the particular Services to be performed.

23.16. The Contractor shall ensure that its employees have full regard to the Council's public service standards published from time to time to ensure that treatment of members of the general public conforms with the Council's Single Equalities Scheme detailed in Schedule 12 (Council's Single Equalities Scheme).

23.17. The Contractor shall operate the Single Equalities Scheme detailed in Schedule 12 (Council's Single Equalities Scheme) and delivered according to the Contract Delivery Plans. The Contractor warrants that as far as possible this policy complies with and shall throughout the Service Period be amended from time to time to continue to comply with all statutory Codes of Practice for Employment, (or any substitute or amended guidance of a similar nature), which give practical guidance to employers and others on the elimination of discrimination on grounds of sex, race and disability and the promotion of equality of opportunity in employment. The Contractor shall provide such reasonable information as

the Council may reasonably require upon reasonable notice to enable it to assess the Contractor's continuing compliance with any applicable Code of Practice.

- 23.18. If any Court of Tribunal, or the Commission for Racial Equality, the Equal Opportunities Commission and Disability Rights Commission should make any finding of unlawful discrimination against the Contractor, then the Contractor shall take all necessary reasonable steps to prevent recurrence of such unlawful discrimination. The Council may upon reasonable notice require the Contractor to provide full details of the steps taken to prevent such recurrence.
- 23.19. The Contractor's Equal Opportunities Policy shall be set out in any instructions circulated to those members of the Contractor's staff concerned with recruitment training and promotion, in relevant documentation available to its staff and others, and in other relevant literature. As a minimum, all recruitment advertisements will state that the Contractor is "striving to be an equal opportunities employer". The Contractor may be required upon giving reasonable notice to provide to the Council copies of such instructions, documents, advertisements and other literature.
- 23.20. The Contractor shall procure that the provisions of this Clause shall (mutatis mutandis) be incorporated within and apply to any Sub-Contractor approved in accordance with this Contract.

24. PENSIONS

- 24.1. The Contractor will procure a broadly equivalent pension in respect of the Transferring Employees to their previous pension arrangements.
- 24.2. Contractor Undertaking
The Contractor undertakes to the Council to procure that the Contractor will comply with its obligations with regard to stakeholder pensions under the Welfare Reform and Pensions Act 1999 (as amended by the Pensions Act 2004) and regulations made there-under.
- 24.3. Indemnity
The Contractor agrees to indemnify the Council fully and to hold it harmless at all times from any loss or costs, suffered or incurred by it which arise from claims by Eligible Employees of the Contractor and any sub-contractor or by any trade unions, elected Eligible Employee representatives or staff associations in respect of all or any such Eligible Employees, which

arises out of the failure of the Contractor to comply with this Clause 24.

24.4. Subsequent Transfers

24.4.1. If the Contractor transfers to another employer (whether by way of a transfer under TUPE or otherwise) the employment of any employee who is or will be engaged wholly or partly in connection with the Services, the Contractor will:

24.4.2. consult with and inform those employees of the pension provisions relating to that transfer so far as it is aware.

24.5. Warranty

The Contractor warrants that it has complied with its obligations with regard to stakeholder pensions under the Welfare Reform and Pensions Act 1999 (as amended) and regulations made there- under.

25. ASSIGNMENT AND SUB-CONTRACTORS

25.1. 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 this Contract.

25.2. 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 in any other way to bind the Council to the performance, variation, release or discharge of any obligation.

25.3. 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 bylaw or any regulation of any kind.

25.4. The Contractor shall not without the prior written consent of the Council assign, transfer, sub-contract or otherwise dispose of any interest in this Contract.

25.5. In the event that the Contractor enters into any sub-contract in connection with this Contract it shall:

25.5.1. remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

- 25.5.2. impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the Sub-Contractor complies with such terms; and
- 25.5.3. provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Authorised Officer.

26. TERMINATION

- 26.1. Subject to the provisions of this Contract, the grounds for termination are:
 - 26.1.1. the end of the Contract at the expiry of the Service Period;
 - 26.1.2. any event of Contractor Default meaning such event giving rise (subject to the terms of this Contract) to a right of termination as set out in Clause 26.6 (Early Termination on Contractor Default);
 - 26.1.3. any No Fault Event meaning such events giving rise (subject to the terms of this Contract) to a right of termination as set out in Clause 26.7 (Early Termination for No Fault Events); and
 - 26.1.4. any early termination on the occurrence of a Prohibited Act as set out in Clause 26.10 (Early Termination for Corrupt Gifts and Fraud);
 - 26.1.5. any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 applying to this Contract, namely where:
 - 26.1.5.1. the contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9);
 - 26.1.5.2. the contractor has, at the time of the contract award, been in one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or
 - 26.1.5.3. the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the

Court of Justice of the European Union in a procedure under Article 258 of TFEU.

- 26.2. The parties may terminate this Contract only as expressly provided in this Clause 26 (Termination).
- 26.3. Save as otherwise expressly provided in this Contract:
 - 26.3.1. expiry or termination of the Service Period shall be without prejudice to any accrued rights and obligations under this Contract as at the Expiry Date or the Termination Date (as the case may be); and
 - 26.3.2. expiry or termination of the Service Period shall not affect the continuing rights of the Council and the Contractor under any provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.
- 26.4. Termination on Expiry of Service Period
 - 26.4.1. On the expiry or earlier termination of this Agreement, the Contractor shall do all acts reasonably necessary to ensure that the Council or its nominee (successor Contractor) obtains all of its rights, title and interest in and to the Assets (or any such Assets as the Council or its nominee requires) with effect on and from the Expiry Date and shall provide an inventory and description of all such Assets no later than six (6) months prior to the Expiry Date for a sum of £1 (if demanded) and shall comply as reasonably practicable with the provisions of Clause 16 (Maintenance).
 - 26.4.2. The Contractor shall take all reasonable steps and co-operate fully with the Council and any successor Contractor so that any continuation in the Service is achieved with the minimum of disruption and so as to prevent or mitigate any inconvenience or risk to health or safety of the employees of the Council and members of the public.
- 26.5. Early Termination on Contractor Default
 - 26.5.1. Subject to the provisions of Clause 26.2, where a Contractor Default has occurred and the Council wishes to terminate the Contract, it must serve a Termination Notice on

the Contractor within thirty (30) Working Days of becoming aware of the Contractor Default.

26.5.2. The Termination Notice must:

26.5.2.1. specify the type of Contractor Default which has occurred entitling the Council to terminate; and

26.5.2.2. notify the Contractor as to whether the Council wishes the Contractor or transfer to it all of its rights, title and interest in and to the Assets, (or any of such Assets as the Council requires).

26.5.3. The Contract will terminate on the day falling thirty (30) Working Days after the date the Contractor receives the Termination Notice, unless the Contractor rectifies the Contractor Default within twenty (20) Working Days of receipt of the Termination Notice.

26.5.4. If the Contract is terminated pursuant to this Clause 26 the Council may require the Contractor to transfer its title, interest and rights in and to any Assets to the Council (or any of such Assets as the Council may require).

26.5.5. The Contractor shall do all acts reasonably necessary to ensure on termination of this Contract that the Council or its nominee (successor Contractor) obtains all of its rights, title and interest in and to the Assets (or any such Assets as the Council or its nominee requires) with effect on and from the date of termination and shall provide an inventory and description of all such Assets no later than five (5) Working Days after the date of termination and shall comply as far as reasonably practicable with the provisions of Clause 15 (Maintenance).

26.5.6. If the Council notifies the Contractor under Clause 26.4.1 that it wishes to take a transfer of the assets above the parties shall meet within 10 Working Days of the date of termination to agree the process to value the Assets to be transferred to the Council, if the parties cannot agree to a valuation of the Assets then either party may refer the matter to Dispute Resolution under Clause 37.

26.6. Early Termination for No Fault Events

- 26.6.1. No party shall be entitled to bring a claim for a breach of obligations under the Contract by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that force Majeure Event.
- 26.6.2. Nothing in sub-Clause 26.6.1 above shall affect any entitlement to make deductions or any deductions made as a result of Schedule 4 (Payment Mechanism) in the period during which the Force Majeure Event is subsisting.
- 26.6.3. On the occurrence of a Force Majeure Event, the Affected Party shall notify the other party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 26.6.4. As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.
- 26.6.5. If no such terms are agreed on or before the date falling sixty (60) Working Days after the date of the commencement of the Force Majeure Event and Such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a further period of more than twenty (20) Working Days, the, subject to sub-Clause 26.6.10 below, either party may terminate the Contract by giving twenty (20) Working Days' written notice to the other party.
- 26.6.6. If the Contract is terminated under Sub-Clause 26.6.5 above the Council may require the Contractor to transfer its title, interest and rights in and to any Assets to the Council (or any of such Assets as the Council may require) in accordance with Clause 26.6.10 below.
- 26.6.7. If the Contractor gives notice to the Council under sub-Clause 26.6.5 above that it wishes to terminate the

Contract, then the Council has the option to accept such notice or to respond in writing on or before the date falling five (5) Working Days after the date of its receipt stating that it requires the Contract to continue. If the Council gives the Contractor such notice, then:

26.6.7.1. the Council shall pay to the Contractor the Contract Payment from the day after the date on which the Contract would have terminated under sub-Clause 26.6.5 as if the Service was being fully provided; and

26.6.7.2. the Contract will not terminate until expiry of written notice (of at least twenty (20) Working Days) from the Council to the Contractor that it wishes the Contract to terminate.

26.6.8. The parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with industry good practice to overcome or minimise the consequences of the Force Majeure Event.

26.6.9. The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

26.7. Valuation of Assets

26.7.1. The Contractor shall do all necessary acts to ensure that the Council or its nominee (successor Contractor) obtains all of its rights, title and interest in and to the Assets (or any of such Assets as the Council or its nominee requires) with effect on and from the date of termination and shall provide an inventory and description of all such Assets no later than five (5) Working Days after the date of termination and shall comply as

far as reasonably practicable with the provisions of Clause 15 (Maintenance).

26.7.2. If this Contract terminates under this clause the parties shall meet within 10 Working Days of the date of termination to agree the process to value the Assets to be transferred to the Council, and if the parties cannot agree to a valuation of the Assets then either party may refer the matter to Dispute Resolution under Clause 37.

26.8. Early Termination for Prohibited Act

26.8.1. Corrupt Gifts and Fraud

The Contractor warrants that in entering into the Contract it has not committed any Prohibited Act.

26.9. Termination for Corrupt Gifts and Fraud

26.9.1. If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their officers, agents or shareholders commits any Prohibited Act, then the Council shall be entitled (acting in a reasonable and proportionate manner having regard to such matters as the gravity of and the identity of the person performing the Prohibited Act) to act in accordance with the provisions of this Clause.

26.9.2. If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Council may terminate the Contract by giving notice to the Contractor.

26.9.3. If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Council may give notice to the Contractor of termination and the Contract will terminate, unless within twenty (20) Working Days of receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Service by another person.

26.9.4. If the Prohibited Act is committed by a Sub- Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the council may give notice to the Contractor of termination and the Contract will

terminate, unless within twenty (20) Working Days of receipt of such notice the Contractor terminates the relevant Contract Document and procures the performance of such part of the Service by another person.

26.9.5. If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Council may give notice to the Contractor of termination and the Contract will terminate, unless within twenty (20) Working Days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Service by another person.

26.9.6. If the Prohibited Act is committed by any other person not specified in sub-Clauses 26.10.1 to 26.10.5 above, then the Council may give notice to the Contractor of termination and the Contract will terminate unless within twenty (20) Working Days of receipt of such notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractor) and (if necessary) procures the performance of such part of the Service by another person.

26.9.7. Any notice of termination under this Clause shall specify:

26.9.7.1. the nature of the Prohibited Act; and

26.9.7.2. the identity of the party whom the Council believes has committed the Prohibited Act; and

26.9.7.3. the date on which the Contract will terminate, in accordance with the applicable provision of this Clause.

26.10. Within 10 Business Days following notice of termination being served under the provisions of this Clause or no less than one month prior to the expiry of this Contract, the Contractor shall produce and serve on the Council an Exit Plan complying with the requirements of Schedule 7.

27. COUNCIL STEP-IN

27.1. If the Council reasonably believes that it needs to take action in connection with the Service:

- 27.1.1. because a serious risk exists or is reasonably foreseen to the health or safety of persons or property or to the Environment; and/or
 - 27.1.2. to discharge a statutory duty,then the Council shall be entitled to take action in accordance with sub-Clauses 27.2 to 27.3.
- 27.2. If Clause 27.1 applies and the Council wishes to take action, the Council shall notify the Contractor in writing of the following:
 - 27.2.1. the action it wishes to take;
 - 27.2.2. the reason for such action;
 - 27.2.3. the date it wishes to commence such action;
 - 27.2.4. the time period which it believes will be necessary for such action; and
 - 27.2.5. to the extent practicable, the effect on the Contractor and its obligation to provide the Service during the period such action is being taken.
- 27.3. Following the service of such notice, the Council shall take such action as notified under Clause 27.2 above and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the Contractor shall give all reasonable assistance to the Council while it is taking such Required Action save that in the case of an emergency the council may serve notice retrospectively.
- 27.4. If the Contractor is not in breach of its obligations under the Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Service:
 - 27.4.1. the Contractor shall be relieved from its obligations to provide such part of the Service; and
 - 27.4.2. in respect of the period in which the Council is taking the Required Action and provided that the Contractor provides the Council with reasonable assistance (such assistance to be at the expense of the Council to the extent incremental costs are incurred), the Contract Payment due from the Council to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Service affected by the Required Action in full over that period.

27.5. If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Service:

27.5.1. the Contractor shall be relieved of its obligations to provide such part of the Service; and

27.5.2. in respect of the period in which the Council is taking Required Action, the Contract Payment due from the Council to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Service affected by the Required Action in full over that period, less an amount equal to all the Council's costs of operation in taking the Required Action.

28. INDEMNITIES, GUARANTEES AND CONTRACTUAL CLAIMS

28.1. Indemnity

The Contractor shall indemnify and keep indemnified throughout the Service Period the Council its other contractors and its officers and their staff from and against all claims, demands, proceedings, costs, charges and expenses in respect of or in connection with:

28.1.1. death or injury to or of any person (including any person employed by the Contractor or any Sub-Contractor) or damage to property real or personal (including property belonging to or in the possession of a person or persons employed by the Contractor or any Sub-Contractor, property of service users and property of any public authority) happening consequent upon or in connection with the carrying out of the Contract by the Contractor, but only to the extent caused by the Breach of Duty or negligent act, error or omission of the Contractor or any Sub-Contractor;

28.1.2. all claims whatsoever and howsoever arising which may at any time be made which arise out of accidents to the property of the Contractor or the property of any Sub-Contractor, and/or loss or damage to the Contractors property or the property of the Staff of either the Contractor or any Sub-Contractor except to the extent that such accidents

- arise from any negligent act, error or omission on the part of the Council, their servants or agents or other contractors;
- 28.1.3. all claims in respect of the Contractor and any of its Sub-Contractors non-compliance with applicable law and regulation;
- 28.1.4. all and any claims in respect of breach of intellectual property rights, which may arise out of or in consequence of its performance or non-performance under this Contract. Damages arising from such acts or omission shall be limited to direct and unavoidable losses and the Council shall take all reasonable steps to mitigate such losses.
- 28.1.5. any claims related to the use or treatment of Assets, in particular any Assets utilised by the Contractor which remain the property of third parties under lease or hire purchase arrangements as described in Clause 17.1.9 and Schedule 6.
- 28.2. Subject to its obligations under the Contract, the Council shall not be liable for any injury, loss or damage howsoever caused except for loss or damage arising from negligent acts or omission of the Council, its servants or agents. Damages arising from such negligent acts or omission shall be limited to direct and unavoidable losses and the Contractor shall take all reasonable steps to mitigate such losses.
- 28.3. Neither party shall in any circumstances be liable to the other for any loss of profit, business or production or any similar loss or damage whether direct, indirect or consequential howsoever caused.
- 28.4. The Council shall not be liable in respect of any representation or warranty given by the Council, its officers and advisers including but not limited to any representations or warranty relating to the quantities or estimates set out in the Specifications or description of Service unless provided fraudulently.
- 28.5. Without prejudice to the generality of Clause 28.6, the Contractor hereby indemnifies the Council against any damage, claim or liability of any kind in respect of any breach by the Contractor, its servants or agents of the duty of care under section 34 of the EPA as respects any Waste resulting from or coming under its control by reason of any activity or operation directly or indirectly connected with its performance of its obligations under this Contract.
- 28.6. Conduct of Claims

This Clause 28.6 shall apply to the conduct, by apart from whom as indemnity is sought under this Contract, of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity. The party having, or claiming to have, the benefit of the indemnity is referred to as the “Beneficiary” and the party giving the indemnity is referred to as the “Indemnifier”. Accordingly:

- 28.6.1. if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become titled to, indemnification under this Contract, or in relation to involvement in any investigation or proceedings by any auditor, inspector or ombudsman, the Beneficiary shall give notice in writing to the Indemnifier as soon as practicable together with such further information and documentation he or she may require and in any event within twenty (20) Working Days of receipt of the same;
- 28.6.2. subject to sub-Clauses 28.6.3, 28.6.4 and 28.6.5 below, on the giving of a notice by the Beneficiary pursuant to sub-Clause 28.6.1 above, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a sufficient indemnity to its reasonable satisfaction against all costs, charge and expenses, actions, demands, proceedings, claims whatsoever that it may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;
- 28.6.3. with respect to any claim conducted by the Indemnifier pursuant to sub-Clause 28.6.2 above:

- 28.6.3.1. the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
- 28.6.3.2. the indemnifier shall not bring the name of the Beneficiary into disrepute; and
- 28.6.3.3. the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
- 28.6.3.4. the Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this contract if:
- 28.6.3.5. the Indemnifier is not entitled to take conduct of the claim in accordance with sub-Clause 28.6.2 above; or
- 28.6.3.6. the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within twenty (20) Working Days of the notice from the Beneficiary under sub- Clause 28.6.1 above or notifies the Beneficiary that it does not intend to take conduct of the claim; or
- 28.6.3.7. the Indemnifier fails to comply in any material respect with the provisions of sub-Clause 28.6.3 above;
- 28.6.3.8. the Beneficiary shall be free at any time to give notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any defence, dispute, compromise or appeal of any claim (or of any incidental negotiations) to which sub-Clause 28.6.2 above applies. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all reasonable co-operation, access and assistance for the purposes of considering and resisting such

claim. If the Beneficiary gives any notice pursuant to this paragraph, then the Indemnifier shall be released from any liability under its indemnity under Clause 28.1 and, without prejudice to any accrued liabilities, any liability under its indemnity given pursuant to sub-Clause 28.6.2 in respect of such claim;

28.7. If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event of circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

28.7.1. an amount equal to the sum recovered (or the value of the saving or benefit obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and

28.7.2. the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

providing that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose indirect or consequential losses or claims for loss of profits which are excluded by this Contract from being recovered from the Indemnifier); and

28.7.3. any person taking any of the steps contemplated shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Contract;

28.8. If any payment by one party under an indemnity in this Contract is subject to Tax in the hands of the recipient, the recipient may demand in writing to the party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such Tax payable in respect of such additional amount, the recipient

receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such Tax. In relation any such additional amount payable to the Contractor, the Contractor and the Council shall have the same rights and obligations as would apply to a Relevant Tax Liability and shall apply mutatis mutandis to the payment of the additional amount. The party making the payment shall pay such additional amount within ten (10) Working Days of receipt of such demand.

- 28.9. Without prejudice to Clause 29 (Insurance), the Contractor shall not be entitled to any payment which would not have been due under this Contract to the extent that the Contractor is or should be able to recover under any policy of insurance required to be maintained in accordance with this Contract (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Contractor (or any Contractor Party), including but not limited to non-disclosure or under-insurance).

29. INSURANCE

- 29.1. From the Service Commencement Date of the Contract and for the remainder of the duration of the performance of the Services the Contractor shall maintain and ensure that its sub-contractors maintain with reputable insurers which shall be deemed insurers with a Standard and Poors rating of A- or above in accordance with the following minimum insurance requirements:
- 29.1.1. employer's liability £10m (but £5m in respect of claims arising from terrorism or asbestos) (to comply with statutory requirements);
 - 29.1.2. public liability £10m (in respect of any one occurrence or series of acts or occurrences in any one year); and
 - 29.1.3. vehicle, plant and equipment insurance to comply with statutory requirements (or the requirements of any third party where subject to Lease or Hire Purchase obligations).
- 29.2. Upon request by the Council the Contractor shall produce the Certificates of Insurance or other confirmation of coverage issued by the Contractor's insurance broker confirming that the insurances as required by Clause 29.1 are being properly maintained.

- 29.3. Both the Contractor and any Sub-Contractor shall ensure that all insurance policies required to be arranged by them pursuant to clause 29.1 shall extend to provide protection to the Council under the provisions of an “indemnity to principals” clause.
- 29.4. The Council shall be entitled to notify the Contractor in writing that in its opinion any such policy of insurance does not provide sufficient cover to comply with the Contractor’s obligations under Clause 29.1 and to require the Contractor to provide such insurance as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and maintain such insurance as the Council shall reasonably require in breach of which the Council itself may call such insurance to be effected. Where such breach does occur, the Contractor shall pay to the Council as a debt such sum as the Council shall certify as being the cost to the Council in effecting such insurance.
- 29.5. Notwithstanding any of the provision of this Contract, the aggregate liability of the Contractor for any loss resulting from a single incident of collected series of incidents which is not insured pursuant to the requirements contained within Clause 29.1 whether such liability arising in tort (including negligence), breach of contract, breach of law or otherwise in connection with this Contract shall in no event exceed £5,000,000 (five million pounds sterling). Any payments made by the Contractor to the Council or deductions from payments due to the Contractor by the Council arising from default notices, rectification notices and notice of failure shall, for the avoidance of doubt also be included within this aggregate cap. Notwithstanding any other provision in this agreement the Contractor does not seek to limit or exclude its liability for fraud, fraudulent presentation, death or personal injury caused by its negligence.
- 29.6. If the Contractor fails to take out and maintain the necessary insurances the Council may pay any premiums required to keep such insurance in force or itself procure such insurance and may in either case recover such amounts from the Contractor on written demand.
- 29.7. The Contractor shall give the Council notification within ten (10) Working Days after any claim on any of the insurance policies referred to in this Clause and (if required) full details of the incident giving rise to the claim where such claim is of a material nature such that it is likely to have reputational impact upon the Council.

- 29.8. Neither failure to comply not full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its liabilities and obligations under this Contract.
- 29.9. The insurance premiums referred to shall be the responsibility of the Contractor.

30. INFORMATION AND CONFIDENTIALITY

- 30.1. Subject always to the provisions of Clause 30.2 the parties shall keep confidential all matters relating to this Contract and Contract Documents and Commercially Sensitive Information and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to the Contract.
- 30.2. Clause 30.1 shall not apply to:
- 30.2.1. any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under the Contract;
 - 30.2.2. any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause;
 - 30.2.3. any disclosure to enable a determination to be made under Clause 37 (Dispute Resolution);
 - 30.2.4. any disclosure which is required by any Legislation (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory Council having the force of law;
 - 30.2.5. any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - 30.2.6. any disclosure by the Council of information relating to the Contract and such other information as may be reasonably required for the purpose of a due diligence exercise to any proposed new contractor, its advisers and lenders, should the Council decide to re-tender the Contract;
 - 30.2.7. any registration or recording of the Consents and property registration required;

- 30.2.8. any disclosure or information by the Council to any other department, office or agency of the Government; or
- 30.2.9. any disclosure for the purpose of:
 - 30.2.9.1. the examination and certification of the Council's or the Contractor's accounts and any information related thereto by any statutory inspector, auditor, ombudsman or similar; or
 - 30.2.9.2. any examination pursuant to the Audit Commission Act 1998 (as amended by the Local Government and Public Involvement in Health Act 2007) of the economy, efficiency and effectiveness with which the Council has used its resources.
- 30.3. Where disclosure is permitted under Clause 30.2, other than sub-Clauses 30.2.4, 30.2.6, 30.2.8 and 30.2.9, the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.
- 30.4. The Contractor recognises that the Council has obligations to third parties to provide information concerning the proper performance of its functions and these obligations require the supply of information to those third parties. By way of an example, during the Service Period, the Council is likely to have to respond to enquiries, both written and oral concerning the Service, from various government agencies (for example, the Local Government Ombudsman, the Department of the Environment, HM Treasury, the Health and Safety Executive), from democratically elected representatives of the public (for example, Members of Parliament, Members of the European Parliament and Council Members) from bodies which regulate its affairs (for example, external auditors, the Audit Commission, the Equal Opportunities Commission, and the Commission for Racial Equality, and under the provision of a Citizen's Charter Mark or BS EN ISO 9002 accreditation) and from other groupings with a legitimate interest in the Council's affairs (for example, the press, environmental groups and members of the public). The Contractor agrees to adopt the Council's protocol for engagement with the press and media and to provide informed representatives to reasonably attend formal meetings with those groupings having a legitimate interest in the provision of the services (including but not limited to Scrutiny Committees).

- 30.5. The Contractor shall ensure that any request for information received by it from any interested party is reported immediately to the Authorised Officer responsible for that part of the Service (together with copies of relevant correspondence). The Council shall take the lead in responding to any request for information and the Contractor shall co-operate fully with the Council in such matters. In particular the Contractor shall ensure that its staff make no oral response to the enquiry which is critical of the Council and could lead to claims or other similar action and that all responses to oral inquiries are recorded in writing and copied immediately to the relevant Council officer to whom the enquiry was reported.
- 30.6. For the purposes of the Audit Commission Act 1998, the Audit Commission and the District Auditor may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-Contractor and may require the Contractor and any Sub-Contractor to produce such oral or written explanations as he considers necessary.
- 30.7. The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Council in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Council.
- 30.8. Where the Contractor, in carrying out its obligations under the Contract, is provided with information relating to individuals, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that individual and has obtained the prior written consent of the Council.
- 30.9. On or before the Expiry Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to people including any documents, in the possession, custody or control of a Sub-Contractor, are delivered up to the Council.
- 30.10. The Contractor will note and facilitate the Council's compliance with the Freedom of Information Act 2000. In the event that the Council is required to provide information to a person as a result of a request made to it under the Code, the Council shall adhere to the requirements of the Code in disclosing information relating to the Contract and the Contractor.

- 30.11. The parties acknowledge that the Audit Commission has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

31. CONTRACTOR'S RECORDS

- 31.1. The Contractor shall at all times:
- 31.1.1. maintain a full record of particulars of the costs of performing the Services;
 - 31.1.2. maintain full records of all documents showing how the Contractor intends to achieve the Contract Standard including all schedules of work in respect of any of the Services, all maintenance programmes for Assets and all other documents or records showing compliance or non-compliance with all Legislation and Guidance;
 - 31.1.3. when requested by the Council, provide a summary of any of the costs referred to in sub-Clause 31.1.1, including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Council may reasonably require to enable the Council to monitor the performance by the Contractor of its obligations under this Contract; and
 - 31.1.4. provide such facilities as the Council may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause.
- 31.2. Compliance with the above shall require the Contractor to keep (and where appropriate shall procure that the Sub-Contractors shall keep) books of account in accordance with best accountancy practice with respect to the Contract showing in detail:
- 31.2.1. administrative overheads;
 - 31.2.2. payments made to Sub-Contractors;
 - 31.2.3. capital and revenue expenditure;
 - 31.2.4. such other items as the Council may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of Clause 22 (Variations for Change in Service),
- and the Contractor shall have (and procure that the Sub-Contractors

shall have) the books of account evidencing the items listed in sub-Clauses 31.2.1 to 31.2.4 available for inspection by the Council (and any expert) upon reasonable notice, and shall present a report of these to the Council as and when requested.

31.3. The Contractor shall maintain or procure that the following records are maintained:

31.3.1. a full record of all incidents relating to health and safety (whether or not Notifiable Health and Safety Incidents) and security which occur during the Contract period;

31.3.2. full records of all maintenance procedures carried out during the Contract Period, and

31.3.3. full records of all Customer and Public Complaints received by or notified to the Contractor,

and the Contractor shall have the items referred to in sub-Clauses 31.3.1 to 31.3.3 available for inspection by the Council upon reasonable notice, and shall present a report of them to the Council as and when requested.

31.4. The Contractor shall permit records referred to in this Clause to be examined and copied by the Authorised Officer and other representatives of the Council, and by the Audit Commission, District Auditor, Ombudsman and their representatives.

31.5. Upon termination of the Contract, the Contractor shall deliver up to the Council all records held by the Contractor under this Clause and/or in relation to the carrying out or performance of the Services and in the event that the Council wishes to enter into another contract for the operation and management of the Contract the Contractor shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Council to provide information relating to the Contractor's costs of operating and maintaining the Contract.

31.6. All information referred to in this Clause is subject to the obligations set out in Clause 30 (Information and Confidentiality).

31.7. The Contractor shall make or cause to be made such oral or written reports on the performance of its obligations under this Contract as the Council may from time to time reasonably request which shall include reports to the Authorised Officer made:

- 31.7.1. on a monthly basis setting out details of instructions received, specify the date of receipt of the work service carried out since the previous monthly report or, in the case of the first report, since the Commencement Date; work remaining to be done; and any differences between the work the Contractor has been instructed to do and the work remaining to be done on those matters;
- 31.7.2. the exact content and format of these reports (whether documentary or in machine readable or electronic format) and the information and level of detail required shall be that contained in the Specifications, or as reasonably determined the Authorised Officer.

32. SOFTWARE LICENSING

- 32.1. In relation to any computer software that is used in order to deliver the Services the Contractor acknowledges that the use of same by the Council may be prohibited or restricted (for example by the terms of the software licence between the Contractor and a third party). In such circumstances, the Contractor shall use its reasonable endeavours at its own expense to enable the Council and any relevant third party contractor to use the software for the purposes of providing the Services including, where permissible, novating, assigning, sub-licensing or otherwise transferring to the Council the right to use the software for the said purpose.
- 32.2. Nothing in this Clause:
 - 32.2.1. imposes any obligation on the Council to do anything which might prejudice or restrict its right to use the software in question for any other purpose; or
 - 32.2.2. constitutes a warranty or representation that the Contractor has the right to permit the Council to use the software and/or the right to novate, assign or sub-license the right to use the software to the Council.
- 32.3. The Contractor undertakes to defend the Council from and against any claim or action that the software used in order to deliver the Services (the "Software") or its use infringes the intellectual property rights of a third party (the "IPR Claim") and shall fully indemnify and hold harmless the Council (and any person claiming through it) from and against any

losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Council as a result of or in connection with the IPR Claim.

- 32.4. To the extent that the Contractor utilises any software provided to it by the Council, the Council undertakes to indemnify the Contractor from and against any claim or action that such software used in order to deliver the Services or its use infringes the intellectual property rights of a third party and shall fully indemnify and hold harmless the Contractor and any person claiming through it from and against any losses, damages, costs, including legal fees and expenses incurred by or awarded against the Contractor as a result of or in connection with such IPR claim.
- 32.5. The party seeking an indemnity under this clause agrees that:
- 32.5.1. it shall as soon as reasonably practicable notify the other party in writing of any IPR Claim of which it has notice;
 - 32.5.2. such party shall not make any admission as to liability or agree to any settlement of or compromise any IPR Claim without the prior written consent of the other party which consent shall not be unreasonably withheld or delayed; and
 - 32.5.3. such party shall, on request and at its own expense, be entitled to have the conduct of or settle all negotiations and litigation arising from any IPR Claim and it shall, at the other party's request and expense, give the other party all reasonable assistance in connection with those negotiations and litigation.
- 32.6. If any IPR Claim is made, or in the indemnifying party's reasonable opinion is likely to be made, against the party claiming the indemnity, the indemnifying party may promptly and at its own expense either:
- 32.6.1. procure for the party seeking indemnity the right to continue using and possessing the Software; or
 - 32.6.2. without diminishing or curtailing any of the function or facilities or the performance of the Software, modify or replace the infringing part of the Software so as to avoid the infringement or alleged infringement.
- 32.7. For the avoidance of doubt the other party shall not be in breach of this Contract nor liable for any penalty, reduction, reduction or other monetary or financial impact arising it and to the extent of any failure by the party claiming indemnity to assign, licence or otherwise transfer or grant to

the Contractor rights to use any software which is used prior to the Commencement Date and which is required to be used by the Contractor in the provision of the Services.

32.8. Data

The Contractor must, without charge, make available to the Council:

- 32.8.1. all data, documents, reports, specifications, software designs and/or other materials of any nature acquired or in the possession of the Contractor or the third party contractors for the purposes of the Contract and which might reasonably be required by the Council for the purposes of exercising its rights or carrying on its duties under the Contract Documents or carrying out any statutory duty; and
- 32.8.2. (to the extent it has power to do so having used all reasonable efforts) all such data, materials and documents acquired or brought into existence by third parties as may reasonably be required for the purposes referred to in sub-Clause 32.8.1.

32.9. Council's and Contractor's Materials

- 32.9.1. All Intellectual Property rights in data, reports, specifications, software designs and/or other material produced or developed by the Council will vest in and be the property of the Council.
- 32.9.2. All Intellectual Property rights in data, reports, specifications, software designs and/or other materials produced or developed by the Contractor for the purpose of the Contract will vest in and be the property of the Contractor.

32.10. Licence

32.10.1. The Contractor:

- 32.10.1.1. hereby grants to the Council in consideration of the Council entering into this Contract and the other Contract Documents and other good and valuable consideration (receipt of which the Contractor hereby acknowledges) a perpetual, transferable, irrevocable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to use all and any Intellectual Property which is or becomes vested in the Contractor for any purpose (whether during or after the Service Period)

- relating to the management and provision of the Services or the conduct of all the Services; and
- 32.10.1.2. where any Intellectual Property is vested in any third party, shall use all reasonable endeavours to procure the grant of a like licence to the Council for any purpose referred to in sub-Clause 32.10.1.1.
- 32.10.2. With respect to Intellectual Property arising during the Service Period, the licence granted pursuant to sub-Clause 32.10.1.1 above shall take effect immediately upon the coming into existence of such Intellectual Property.
- 32.11. The Council:
- 32.11.1. hereby grants to the Contractor in consideration of the Contractor entering into this Contract and the other Contract Documents a non-exclusive licence (with the right to grant sub-licences to the extent necessary to perform the Services) to use any Intellectual property or computerised data which is vested in the Council and which is being used exclusively in the provision of the Services; and
- 32.11.2. where any Intellectual Property or computerised data is vested in any third party, shall use all reasonable endeavours to procure the grant of a like licence to the Contractor, provided that the Contractor shall be liable for any third party costs arising from such licence.
- 32.12. Computerised Data
- 32.12.1. To the extent that any of the data, materials and documents referred to in this Clause are generated by or maintained on a computer or in any other machine readable format, the Contractor must procure for the benefit of the Council (at no charge or at the lowest possible charge to the Council having used all reasonable efforts to minimise the charge) the grant of a licence or sub-licence for and supply of any relevant software or database to enable the Council to access and otherwise use such data for the purposes set out in the Contract Documents and, following termination of all or any of the Contract Documents, for the purposes referred to in Sub-Clause 32.10.1.1 above.

- 32.12.2. The Contractor shall ensure that:
- 32.12.2.1. any software licence acquired or provided in the fulfilment of the Services is in the name of or may be sub-licensed to the Council (whether or not exclusively); and
 - 32.12.2.2. all software licences relevant to the Services allow for the use of the software by the Council or any third parties including contractors on behalf of the Council; and
 - 32.12.2.3. the Council has the right to relocate the software between locations and on different hardware; and
 - 32.12.2.4. all software licences relevant to the Services are consistent with this Contract.
- 32.12.3. Within twenty (20) Working Days after the Execution Date, the Contractor must submit to the Council its proposals for backing-up and storage in safe custody of the data, materials and documents referred to in this Clause. The Contractor must and must cause its third party contractors to comply with the procedures agreed with the council acting reasonably. The Contractor may vary its procedures for such back-up and storage, subject to submitting its proposals for change to the Council for approval (not to be unreasonably withheld).

32.13. Council Rights in Databases

- 32.13.1. Subject to the rights of third parties, and without prejudice to the rights of the Contractor in any pre-existing material, all rights (including database rights and copyright) in any database vests in and is the property of the Council, which reserves the right to determine whether any information associated with such database is published and, if so under on what conditions and the Contractor must ensure that, where necessary, it secures the right to effect such vesting.
- 32.13.2. The Contractor must not use any database or any information pertaining to any database acquired by it by virtue of carrying out the Services other than for the proper carrying

out of the Contractor's obligations under this Contract or any other Contract Documents without the prior written consent of the Council.

32.13.3. During the Service Period (and for a period of not less than six (6) years thereafter) the Contractor must retain a copy of the database together with fully documented records of the work done pursuant to the Services.

32.13.4. The Council has the right, during the period referred to in sub-Clause 32.13.3 above, and thereafter as long as a copy of any database is actually retained by the Contractor, to require the Contractor to furnish to the Council a copy of all such databases and documented records in such form and detail as the Council may reasonably require.

32.14. Indemnity

The Contractor must, subject to Clause 28 (Indemnities), indemnify the Council from and against all claims, penalties, fines, loss, expense and awards successfully made or brought by any person for or on account of infringement of any Intellectual Property used in connection with the Services.

32.15. Further Assurances

The Contractor undertakes to execute all documents and do all acts that may be reasonably necessary to bring into effect or confirm the terms of any assignment or licence contained or made pursuant to this Clause.

33. DATA PROTECTION

33.1. In relation to all Personal Data, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Service.

33.2. The Contractor and any Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Service and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

33.3. The Contractor shall not disclose Personal Data to any third parties other than:

- 33.3.1. to employees and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Service; or
- 33.3.2. to the extent required under a court order, provided that disclosure under sub-Clause 33.3.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 33 and that the Contractor shall give notice in writing to the Council of any disclosure of Personal Data it or a Sub-Contractor is required to make under this sub-Clause 33.3.2 immediately it is aware of such a requirement.
- 33.4. The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Person Data including but not limited to take reasonable steps to ensure the reliability of staff having access to the Personal Data.
- 33.5. The Council may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor or the Sub-Contractors referred to in sub-Clause 33.4. Within twenty (20) Working Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Council can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.
- 33.6. The Contractor shall indemnify and keep indemnified the Council against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause 33 by the Contractor and/or any act or omission of any Sub-Contractor.

34. PUBLIC RELATIONS AND PUBLICITY

- 34.1. The Contractor shall not by itself, its employees or agents, and shall procure that its Sub-Contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning the Contract without the prior written approval of the Council.
- 34.2. The Contractor will, on the reasonable prior written request of the Council, communicate with representatives of the press, television, radio or

other communications media on specified matters concerning the Contract.

- 34.3. The Contractor will, on reasonable prior written request of the Council, provide sufficient information for the Council to communicate with representatives of the press, television, radio or other communications media on any matters concerning the Contract.
- 34.4. No facilities to photograph or film in or upon any property used in relation to the Contract shall be given or permitted by the Contractor unless the Council has given its prior written approval.

35. NOTICES

- 35.1. All notices, under this Contract shall be in writing and all certificates, notices or written instructions to be given under the terms of this Contract shall be served by sending the same by first class post or by hand, leaving the same at:

- 35.1.1. If to the Contractor:

[REDACTED]

- 35.1.2. If to the Council:

For the attention of the Chief Executive
Melton Borough Council
Parkside, Station Approach
Burton Street
Melton Mowbray
Leicestershire
LE13 1GH

- 35.2. Where any information or documentation is to be provided or submitted to the Authorised Officer or the Contractor's Representative it shall be provided or submitted by sending the same by first class post or by hand, leaving the same at:

- 35.2.1. If to the Contractor's Representative:

[REDACTED]

- 35.2.2. If to the Authorised Officer:

For the attention of Jim Worley (Head of Regulatory Services)
Melton Borough Council
Parkside, Station Approach

Burton Street
Melton Mowbray
Leicestershire
LE13 1GH

(copied in each case to the Council in accordance with Clause 35 above).

- 35.3. Either party to this Contract (and either the Council Representative or the Contractor Representative) may change its nominated address or facsimile number by prior written notice to the other party.
- 35.4. Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Working Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the sender (to be confirmed in writing) that the facsimile has not been received in legible form:
- 35.4.1. within two (2) hours after sending, if sent on a Working Day between the hours of 9am and 4pm; or
- 35.4.2. by 11am on the next following Working Day, if sent after 4pm on a Working Day but before 9am on that next following Working Day.

36. REPRESENTATIVES

- 36.1. Authorised Officer as Representative of the Council
- 36.1.1. The Authorised Officer shall exercise the functions and powers of the Council in relation to the Services or operations which are identified in this Contract as functions or powers to be carried out by the Authorised Officer. The Authorised Officer shall also exercise such other functions and powers of the Council under this Contract as the Council may notify to the Contractor from time to time.
- 36.1.2. The Authorised Officer shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the Council delegated to him pursuant to this Clause, either generally or specifically. Any act of any person shall, for the purpose of this Contract, constitute an

act of the Authorised Officer and all references to the Authorised Officer in this Contract (apart from this Clause) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.

36.1.3. The Council may by notice to the Contractor change the Authorised Officer. The Council shall (as far as practicable) consult with the Contractor prior to the appointment of any replacement for the Authorised Officer, taking account of the need for liaison and continuity in respect of the Contract. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconveniences to the Contractor in the execution of its obligations under this Contract).

36.1.4. During any period when no Authorised Officer has been appointed (or when the Authorised Officer is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Contract) the Council shall carry out the functions which would otherwise be performed by the Authorised Officer.

36.1.5. No act or omission of the Council, the Authorised Officer (or any of its delegated) or any office, employee or other person engaged by the Council shall, except as otherwise expressly provided in this Contract:

36.1.5.1. in any way relieve or absolve the Contractor from, modify, or act as a waiver or estoppel of, any liability, responsibility, obligation or duty under this Contract; or

36.1.5.2. in the absence of an express order or authorisation, constitute or authorise a Variation.

36.1.6. Except as previously notified in writing before such act by the Council to the Contractor, the Contractor and Contractor's Representative shall be entitled to treat any act of the Authorised Officer which is authorised by this Contract as being expressly authorized by the Council and the Contractor and the Contractor's Representative shall not be required to

determine whether an express authorisation has in fact been given.

36.2. Representative of the Contractor

36.2.1. The Contractor's Representative or such other person appointed pursuant to this Clause. The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Council, the Council and the Authorised Officer shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Council and the Authorised Officer shall not be required to determine whether any express authority has in fact been given.

36.2.2. Save in the case of death, serious illness or gross misconduct, the appointment of the Contractor's Representative shall not be terminated by the Contractor without the prior written approval of the Council (not to be unreasonably withheld or delayed). Immediately upon the Contractor's Representative ceasing to act in the case of death, serious illness or gross misconduct, and not less than ten (10) Working Days prior to termination of the appointment in all other cases, the Contractor shall by written notice to the Council appoint a substitute, taking account of the need for liaison and continuity in respect of the Contract. Such appointment shall be subject to the written approval of the Council (not to be unreasonably withheld or delayed).

36.2.3. A competent representative of the Contractor (being either the Contractor's Representative or some other person duly appointed by him) is to be available between the hours of 7.00am and 6pm Monday to Friday inclusive and shall supervise the provision of the Services under this Contract with the Council. Outside these hours such agent or representative shall be contactable by telephone.

36.2.4. The Contractor shall give or provide all necessary management and superintendence during the performance of the Services. Such management and superintendence shall be

given by sufficient persons having proper and adequate knowledge, skill, training and standing as may be requisite for the satisfactory supervision, management and performance of the Services in accordance with the Contract Standard.

37. DISPUTE RESOLUTION

- 37.1. Save as provided in Clause 38 (Contract Relations Panel) any dispute arising in relation to any aspect of the Contract shall be resolved in accordance with this Clause.
- 37.2. If a dispute arises in relation to any aspect of this Contract, the Contractor and the Council shall first consult in good faith in an attempt to come to an agreement in relation to the disputed matter.
- 37.3. If the Contractor and the Council fail to resolve the dispute through such consultation within five (5) Working Days, either party may refer the matter to the Contract Relations Panel to come to an agreement in relation to the disputed matter.
- 37.4. If the Contractor and the Council fail to resolve the dispute following referral to the Contract Relations Panel either party may refer the matter to an Adjudicator selected in accordance with Clause 37.5 below.
- 37.5. The Adjudicator nominated to consider a dispute referred to him shall be selected by the parties or (in the event that they are unable to agree on the identity of the Adjudicator within five (5) Working Days) by the President for the time being of the Chartered Institute of Arbitrators who shall appoint such Adjudicator within twenty (20) Working Days of any application for such appointment by either party.
- 37.6. Within five (5) Working Days of appointment in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.
- 37.7. In the event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty (20) Working Days of appointment (or such other period as the parties may agree after the reference, or forty (40) Working Days from the date of reference if the party which referred the dispute agrees). The Adjudicator shall not be bound to state any reasons for his decision. Unless and until revised, cancelled or

varied by the Arbitrator, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

37.8. The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

37.9. The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitrations Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

37.10. The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

37.11. All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential.

The Adjudicator shall not, save as permitted by Clause 30 (Information and Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

37.12. The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

37.13. If:

37.13.1. there is any dispute in respect of matters referred to in Clause 22 (Variation for Change in Service); or

37.13.2. either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with Clause 37.7; or

37.13.3. both parties agree,
then either party may (within twenty (20) Working Days

of receipt of the Adjudicator's decision, where appropriate),
notify the other party of its intention to refer the dispute
to the courts.

- 37.13.4. The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this Clause.

38. CONTRACT RELATIONS PANEL

- 38.1. The Council and the Contractor shall establish and maintain throughout the Service Period the Contract Relations Panel, consisting of three (3) representatives of the Council (one of whom shall be appointed Chairman) and three (3) representatives of the Contractor which shall have the functions described below.
- 38.2. The functions of the Contract Relations Panel shall be:
- 38.2.1. to provide a means for the joint review of issues relating to all day to day aspects of the performance of this Contract;
 - 38.2.2. to provide a forum for joint strategic discussion, considering actual and anticipated changes in the market and business of the Council, and possible variations of this Contract to reflect those changes or for the more efficient performance of this Contract;
 - 38.2.3. to review the Performance Monitoring Information supplied from time to time;
 - 38.2.4. to receive any Rectification Plan prepared by the Contractor in accordance with sub-Clause 16.4.3 above;
 - 38.2.5. to review, consider and agree the measures to be taken by the Council or the Contractor in accordance with sub-Clause 16.6 above in respect of increased or additional monitoring of the Contractor's performance;
 - 38.2.6. to review and amend if necessary or appropriate the Performance Indicators;

- 38.2.6.1. to consider the Annual Improvement Plan and to have regard to the views and recommendations of the parties; and
 - 38.2.6.2. following such consideration to formulate and notify to the parties an Annual Review Plan Statement setting out its recommendations for improving the provision of the Services by the Contractor including (without prejudice to the generality of the foregoing) review and improvements to the Specifications, the Service Delivery Plans and the Performance Indicators; and
 - 38.2.6.3. in certain circumstances, pursuant to Clause 37 (Dispute Resolution), to provide a means of resolving disputes or disagreements between the parties amicably.
- 38.2.7. The role of the Contract Relations Panel is to make recommendations to the parties, which they may accept or reject at their discretion. Neither the Contract Relations Panel itself, not its members acting in that capacity, shall have any authority to vary any of the provisions of this Contract or to make any decision which is binding on the parties (save as expressly provided in Clause 37 (Dispute Resolution). Neither party shall rely on any act or omission of the Contract Relations Panel, or any member of the Contract Relations Panel acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of either party.
- 38.2.8. The parties shall appoint and remove their representatives on the Contract Relations Panel by written notice delivered to the other at any time. A representative on the Contract Relations Panel may appoint (and subsequently remove) an alternate (who may be another representative of that party) in the same manner. If a representative is unavailable (and the other party's representatives may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.

- 38.2.9. Subject to the provisions of this Contract, the members of the Contract Relations Panel may adopt such procedures and practices for the conduct of the activities of the Contract Relations Panel as they consider appropriate from time to time and:
- 38.2.9.1. may invite to any meeting of the Contract Relations Panel such other persons as its members may agree; and
 - 38.2.9.2. receive a review report from any person agreed by its members.
- 38.3. Recommendation and other decisions of the Contract Relations Panel must have the affirmative vote of all those voting on the matter, which must include not less than one (1) representative of the Council and not less than one (1) representative of the Contractor.
- 38.4. Each member of the Contract Relations Panel shall have one (1) vote. The Chairman shall not have a right to a casting vote.
- 38.5. The Contract Relations Panel shall meet at least monthly on the tenth Working Day of each calendar month to discuss the Contractor's performance of the Service against the Contract Standard including Rectification Notices, Service Delivery Plans and any other issues relating to the day to day performance of the Services that the parties may wish to discuss from time to time.
- 38.6. Any member of the Contract Relations Panel may convene a meeting of the Contract Relations Panel at any time.
- 38.7. Other than in respect of meetings under Clause 38.8, meetings of the Contract Relations Panel shall be convened on not less than ten (10) Working Days' notice (identifying the agenda items to be discussed at the meeting) provided that in emergencies a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- 38.8. Where the Contract Relations Panel decides it is appropriate, meetings may also be held by telephone or another form of telecommunication, by which each participant can hear and speak to all other participants at the same time.
- 38.9. Minutes of all recommendations (including those made by telephone or other form of telecommunication) and meetings of the Contract Relations Panel shall be kept by the Contractor and copies

circulated promptly to the Committee Members, normally within five (5) Working Days of the making of the recommendation or the holding of the meeting. A full set of minutes shall be open to inspection by either party at any time, upon request.

39. BEST VALUE

The Contractor acknowledges that the Council is subject to the Best Value Duty and shall provide all reasonable assistance to the Council in assisting it in this respect.

40. ENVIRONMENTAL PROTECTION

- 40.1. During the Service Period, the Contractor shall take all and any steps required to ensure that the impact of any operation of the Contractor upon the Environment in pursuance of its obligations under the Contract or otherwise in the performance or non-performance of the Service is adequately and sufficiently assessed, controlled, monitored, mitigated, remediated and therefore minimised and managed as a sustainable solution. The Contractor shall have in place satisfactory contingency plans for abnormal situations and shall indemnify the Council against any claim that may arise out of failure to perform the Service but shall not be liable to the Council to the extent that it is unable to carry out its contingency plans as a result of a situation of Force Majeure.
- 40.2. The Contractor is required to carry out all works and services required to comply with environmental standards and shall undertake and perform such works and services in a timely and competent manner observing all other requirements of this Contract at no cost to the Council.
- 40.3. Without prejudice to the foregoing provisions of this Clause (except where prevented due to a situation of Force Majeure or the direct instruction of the Council) the Contractor shall take all steps necessary to ensure that the Service is carried out in accordance with Environmental Laws and shall indemnify the Council at all times against all claims, liabilities, damages, costs and expenses arising directly or indirectly under Environmental Laws in respect thereof.

41. PLANT

The Contactor shall (if applicable) operate and maintain vehicles, plant and equipment in accordance with all legal standards and the terms of this Contract.

42. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not effect any right or remedy of a third party which exists or is available apart from that Act.

43. FEES, COSTS AND EXPENSES

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Contract and any of the Contract Documents.

44. AMENDMENTS

This Contract may not be varied except by an agreement in writing signed by the duly authorised representatives of the parties.

45. WAIVER

- 45.1. Any relaxation, forbearance, indulgence or delay (together an “**indulgence**”) of any party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether or not against that party or any other person).
- 45.2. No term or provision of this Contract shall be considered as waived by any party to this Contract unless a waiver is given in writing by that party.
- 45.3. No waiver under Clause 45.2 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

46. NO AGENCY

- 46.1. Nothing in this Contract shall be construed as creating a legal partnership or as a contract of employment between the Council and the Contractor.
- 46.2. Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Council and the Contractor shall not hold itself out as having Council or power to bind the Council in any way.
- 46.3. Without limitation to its actual knowledge. The Contractor shall for all purposes of this Contract, be deemed to have such knowledge in respect of the Contract as is held (or ought reasonably to be held) by any Contractor Party.
- 46.4. The Contractor shall not sell, mortgage, charge or allow a lien to be created over the Assets used by it or a sub-contractor at any time in the performance of the Services.

47. ENTIRE AGREEMENT

- 47.1. Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.
- 47.2. Each of the parties acknowledges that:
 - 47.2.1. it does not enter into this Contract on the basis of and does not rely, and has never relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made and agreed to by any person (whether a party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available under this Contract; and
 - 47.2.2. this Clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Contract.

48. SEVERABILITY

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

49. MITIGATION

Each of the Council and the Contractor shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.

50. COUNTERPARTS

This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

51. LAW OF THE CONTRACT AND JURISDICTION

The Contract shall be governed by the law of England and subject to Clause 37 (Dispute Resolution), the parties submit to the exclusive jurisdiction of the courts of England.

52. FURTHER ASSURANCE

Each party shall do all things and execute all further documents necessary to give full effect to this Contract.

53. HUMAN RIGHTS

53.1. The Contractor acknowledges that it is unlawful to exercise functions deemed to be of a public nature which are incompatible with those rights contained in the European Convention of Human Rights Act 1998.

53.2. In providing the Service the Contractor shall throughout the Contract Period and at its own cost be subject to the same duty in respect of a Convention Right in the same way as if it were the Council.

53.3. The Contractor shall release and keep the Council indemnified on demand against all proceedings, claim, demands, and all other liabilities whatsoever which may arise out of or are connected with a

claim or action brought by any person against the Council under the Act arising out of or connected with the Contractors performance of the Service except that the Contractor shall be under no obligation to indemnify the Council in respect of any actions or claims made against the Council under the Act that arise directly as a result of prior instructions given by the Council.

2017

Melton Borough Council

(Authorised Signatory)

(Authorised Signatory)

(Director)

[]

SCHEDULE 1

Conditions Precedent

Part 1

Conditions relating to the Contractor

1. The Contractor confirms in writing that all Transferred Employees have been validly transferred to it under law.
2. The Contractor has taken physical delivery of all of the Assets (on such terms as shall be agreed).
3. The Contractor confirms in writing that it has obtained all board approvals referred to in Clause 4 together with all formal licences and permissions necessary to perform the Services under law.
4. The Contractor confirms in writing that it holds valid policies of insurance meeting the requirements of Clause 29 and otherwise.
5. The Contractor's Parent Company has entered into the Parent Company Guarantee (if required).

Part 2

Conditions relating to the Council

6. The Council has provided evidence (by a copy Cabinet Minute or otherwise) confirming its power and authority to enter into this Contract.

SCHEDULE 2

Specification

[To be inserted when in final form]

Specifications

TBA

SCHEDULE 3 – NOT USED

This Agreement is made on the day of 201[]



DATED 201[]

(1) LEICESTERSHIRE COUNTY COUNCIL

[and

(2) [SCHEME EMPLOYER]]

and

(3) [ADMISSION BODY]

ADMISSION AGREEMENT
To participate in the Local Government Pension Scheme

Leicestershire County Council
County Hall
Glenfield
Leicester
LE3 8RA

SCHEDULE 4

Payment

The Contract Payment shall be £[] annually (Indexed) divided into monthly instalments. Each monthly invoice submitted by the Contractor shall contain the following information for the previous monthly period:

- Monthly Instalment - £[]
- Detail of all Deductions imposed as per Schedule [2], Appendix 2 - £[]
- Payments re agreed variations in service - £[]
- Net payment - £[].

SCHEDULE 5

Service Delivery Plans

[to be supplied once the tenderer has been chosen]

SCHEDULE 6

Assets of the Council

Assets subject to lease or hire purchase agreements

SCHEDULE 7

Expiry Plan

1. In accordance with the requirements of Clause 26.8 of the Contract, no later than six months prior to the expiry of the Contract or within ten Business Days of notice of termination being served under the provisions of clause 26, the Contractor shall produce an Exit Plan to the Council containing the following information:
 - 1.1. proposals with regard to the treatment of all employees, including provisions with respect to consultation, pensions, pay revisions (in accordance with Clause 23.11.1) and entitlements under TUPE;
 - 1.2. provide a list of all Assets which the Contractor is currently using in order to carry out the Services including plant, machinery and equipment, details of books and records including operating and maintenance manuals, health and safety manuals and any other know-how;
 - 1.3. a list of stock of spare parts, tools and other small assets together with any warranties in respect of such assets;
 - 1.4. details of any revenues and other contractual rights;
 - 1.5. details of any intellectual property rights utilised in the performance of the Services;
 - 1.6. a valuation setting out all Assets under the ownership of the Contractor written down to an appropriate value in accordance with normal accounting practice;
 - 1.7. terms upon which the Council or the Replacement Contractor can buy-out the Assets under the ownership of the Contractor at their written down value; and
 - 1.8. details of any licences or property interests held by the Contractor for the purposes of the Services.
2. The Contractor shall be required to co-operate fully with the Council and/or any Replacement Contractor who is engaged to provide further services which are in total or partial replacement for the Services being provided by the Contractor.
3. On or immediately prior to the date of termination of the Contract, the Contractor will provide in hard copy or machine readable form on CD all relevant and up-to-date information to the Council and/or the replacement contractor as may be reasonably required (including the information set out at 1.1 to 1.8 above) subject only to

restrictions imposed by the DPA or any legally enforceable obligations of confidentiality with third parties.

4. In the event that the Contractor is continuing to utilise Assets which are the property of the Council prior to the expiry or termination of the Contract, these shall be returned in good condition to the Council without charge, proper care having been taken of those Assets in accordance with the requirements of Clause 2.1.10 of the Contract.

SCHEDULE 8

Transferred Employees

Job title	Age	Date of commencement of continuous employment	Salary	Full time / Part time	Holiday Entitlement	Other benefits

SCHEDULE 9

Business Continuity Plan

[to be supplied once the tenderer has been chosen]

SCHEDULE 10 (Not Used)

SCHEDULE 11

Form of Parent Company Guarantee

1. INTRODUCTORY WORDING

This deed is made on [].

2. PARTIES

2.1. This agreement is between:

(1) **MELTON BOROUGH COUNCIL** whose offices are at Parkside, Station Approach, Burton Street, Melton Mowbray, Leicestershire LE13 1GH (“the Council”); and

(2) [] a company incorporated under the Laws of England and Wales with registered number [] having its registered office at [] [“the Guarantor”]

2.2. [the Guarantor] is the parent company of [] [“the Contractor”], and has become a party to this agreement as guarantor and indemnifier for all obligations, duties and responsibilities owed to the Council by [the Contractor] in due performance of the Open Spaces Services Contract entered into between the Council and [the Contractor] on or about the date hereof up to the sum of £[].⁷

3. AGREEMENT

If [the Contractor], unless relieved from the performance in accordance with Clause 22 of the Contract (Variations for Change in Service) or by statute or by the decision of the Council in any respect fail to execute the Contract or commit any breach of their obligations or liabilities under it, [the Guarantor] shall indemnify and keep indemnified the Council in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Council arising out of, or in connection with, any failure of [the Contractor] to perform or discharge any of its

⁷ Sum not to exceed one year's contract payments.

obligations or liabilities in respect of the Open Spaces Services Contract.

4. PAYMENT

The Guarantor shall pay on demand in response to a written demand containing appropriate information concerning the subject matter therein under this guarantee within the overall cap set out within Clause 2.2 above.

5. DISCHARGE OF [THE GUARANTOR]

[The Guarantor] shall not be discharged or released from this guarantee by:

- 5.1. any arrangement made between **[the Contractor]** and the Council without the assent of **[the Guarantor]**, or
- 5.2. any alteration in the obligations undertaken by **[the Contractor]**, or
- 5.3. any forbearance whether as to payment time performance or otherwise.

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

Executed as a deed by **[the Guarantor]**

Acting by **[Name of First Director]** and

[Name of Second Director/Secretary]

..... Director

..... Director/Secretary

SCHEDULE 12

Council's Equal Opportunities Policy

SCHEDULE 13

List of Documents for Completion

The following documents should be delivered at completion:

1. Schedules:-
 - 1.1. 3 - Admission Agreement;
 - 1.2. 4 - Payment Mechanism;
 - 1.3. 5 - Contract Delivery Plans;
 - 1.4. 9 - Business Continuity Plan; and
 - 1.5. 11 - Parent Company Guarantee.
2. Additional Documents (referred to in the ITT):
 - 2.1. Lease of Lake View Terrace Depot, Melton, LE13 0BZ (in the form set out in Schedule 14).

SCHEDULE 14

Form of Lease

[to follow]

SCHEDULE 15
Management Information

[Insert including agreed deduction levels].