

**CENTRAL SWINDON NORTH PARISH COUNCIL  
PROVISION OF  
GROUNDS MAINTENACNE  
AND  
STREET CLEANSING SERVICES**

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**Volume 3  
Draft Contract**

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**This Contract** is made on [ ] 2020

**Between**

**(1) Central Swindon North Parish Council** (the "**Council**"); and

**(2) [ ]** (company registered number [ ]) whose registered office is at [ ](the "**Contractor**").

**Background**

- A. On [ ] the Council published an advertisement seeking proposals for the provision of grounds maintenance and street cleansing services (the 'Services').
- B. The Contractor submitted a tender dated [ ] for the provision of the Services and the Council accepted the Contractor's tender on [ ]
- C. The Contractor has agreed to provide the Services within the administrative area of the parish of Central Swindon North for the contract period commencing on [ ] and ending on [ ] upon the terms set out in this Contract.

**Now it is agreed as follows:**

## **PART 1 – PRELIMINARY**

### **1 INTERPRETATION**

#### **1.1 General**

In this Contract except where the context otherwise requires:

- 1.1.1 the masculine includes the feminine and vice-versa;
- 1.1.2 the singular includes the plural and vice versa;
- 1.1.3 a reference to any clause, sub-clause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Contract;
- 1.1.4 save where stated to the contrary, any reference to this Contract or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.1.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- 1.1.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.1.7 words and phrases with a first capital letter or any derivation thereof shall (as the context so requires) have the meanings set out in Volume 1;
- 1.1.8 headings are for convenience of reference only; and
- 1.1.9 words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words.
- 1.1.10 where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Contractor shall notify the Council and the Parties shall update this Contract with a reference to the replacement hyperlink.

#### **1.2 Summary**

- 1.2.1 The Contractor shall provide the Services from the Service Commencement Date.
- 1.2.2 The Contractor shall provide the Core Services as defined in Volume Two (Specification). The Council may instruct the Contractor from time to time, at its absolute discretion to provide Additional Services at the Unit Rates. The Services will be subject to Performance Deductions for failure to meet the standards set out in this Contract. (TBA)

#### **1.3 Non-Exclusivity**

- 1.3.1 The provision of the Additional Services shall not be exclusive, and the Council shall be entitled at any time during the Contract Period to carry out any part of the Additional Services, or services of a similar nature itself or instruct or procure a third party to do so.

#### 1.4 **Volumes**

The Volumes to this Contract form part of this Contract.

#### 1.5 **Precedence of Documentation**

In the event of any inconsistency between the provisions of the body of this Contract and the Volumes, or between the Volumes inconsistency shall be resolved according to the following descending order of priority;

1.5.1 this Contract and Volume 1 (ITT);

1.5.2 Volume 2 (Specification);

1.5.3 Volume 4 (Contractor's Proposals and Service Delivery Plans).

For the avoidance of doubt, the Specification shall always have priority over the Service Delivery Plans and the Contractor shall be obliged to comply with the Specification and provide the Services in accordance with the Specification.

#### 1.6 **Responsibility for Related Parties**

Subject to the provisions of this Contract, the Contractor shall be responsible as against the Council for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor and the Council shall be responsible as against the Contractor for the acts and omissions of the Council Related Parties as if they were the acts and omissions of the Council. The Contractor shall, as between itself and the Council, be responsible for the selection of any Contractor Related Party.

#### 1.7 **Approval**

1.7.1 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Council, nor the failure of the same, shall unless otherwise expressly stated in this Contract, relieve the Contractor of any of its obligations under the Contract Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.7.2 Where in this Contract consent is to be given such consent must be in writing unless the relevant clause in the Contract provides otherwise.

#### 1.8 **Succession**

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 and assignees.

### **2 THIRD PARTY RIGHTS**

No term of this Contract (other than Clause 22) is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Contract.

### **3 COMMENCEMENT AND DURATION**

#### **3.1 Commencement**

This Contract and the rights and obligations of the Parties shall take effect on the Effective Date save that the obligations to provide the Services shall take effect on the Service Commencement Date and shall continue until the Expiry Date unless the Contract is terminated sooner in accordance with these conditions or in accordance with common law or statute or extended in accordance with Clause 3.2.

#### **3.2 Duration**

The Council shall be entitled at its absolute discretion to extend the Contract Period by any number of periods up to an aggregate of two Contract Years. In the event that the Council decides to so extend the Contract Period it shall serve written notice to the Contractor not less than six (6) months before the Expiry Date (or if applicable the Expiry Date as previously extended). In such circumstances the definition of Expiry Date shall be deemed amended accordingly and the Contractor shall continue to provide the Services in accordance with this Contract.

### **4 GENERAL WARRANTIES AND INDEMNITIES**

#### **4.1 Contractor Warranties**

The Contractor warrants and represents to the Council that on the date hereof:

- 4.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 4.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Contract;
- 4.1.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Contract Documents has been taken or, in the case of any Contract Document executed after the date of this Contract, will be taken before such execution;
- 4.1.4 the obligations expressed to be assumed by the Contractor under the Contract Documents are, or in the case of any Contract Document executed after the Effective Date will be, legal, valid, binding and enforceable to the extent permitted by law and each Contract Document is or will be in the proper form for enforcement in England;
- 4.1.5 the execution, delivery and performance by it of the Contract Documents does not contravene any provision of:
  - 4.1.5.1 any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
  - 4.1.5.2 the memorandum and articles of association of the Contractor;
  - 4.1.5.3 any order or decree of any court or arbitrator which is binding on the Contractor; or

- 4.1.5.4 any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 4.1.6 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under any Contract Document;
- 4.1.7 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under any Contract Document;
- 4.1.8 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 4.1.9 the copies of the Contract Documents which the Contractor has delivered or, when executed, will deliver to the Council are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Contract Documents which would materially affect the interpretation or application of any of the Contract Documents;
- 4.1.10 all written statements and representations in any written submissions made by the Contractor as part of the procurement process, including without limitation its response to the selection questionnaire, its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Contractor has otherwise disclosed to the Council in writing prior to the Effective Date;

and the Council relies upon such warranties and representations.

## 4.2 **Contractor Undertakings**

The Contractor undertakes with the Council that for so long as this Contract remains in full force:

- 4.2.1 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Council may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Working Days of becoming aware the same may be threatened or pending or with twenty (20) Working Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a Sub-Contractor) give the Council notice of all such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the Contract, the Contractor's ability to perform its obligations under this Contract;
- 4.2.2 it will not without the prior written consent of the Council (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its

business or assets which would materially affect the ability of the Contractor to perform its obligations under this Contract;

- 4.2.3 it will not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;
- 4.2.4 it will not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself or a Sub-Contractor;
- 4.2.5 it shall not without the written consent of the Council (such consent not to be unreasonably withheld or delayed) make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by the Contract Documents; and

#### 4.3 **Contractor's Due Diligence**

- 4.3.1 Without prejudice to any other obligation of the Contractor under this Contract, the Contractor shall be deemed to have gathered all information necessary to perform its obligations under this Contract.
- 4.3.2 Save as otherwise provided in this Contract the Contractor shall be deemed to have:-
  - 4.3.2.1 satisfied itself before entering into this Contract as to the accuracy and efficiency of the Annual Sum and other financial information stated by the Contractor in its Tender;
  - 4.3.2.2 taken its own advice and carried out its own investigations regarding the Services;
  - 4.3.2.3 obtained for itself all necessary information as to risk contingencies, due diligence and any other circumstances which might influence or affect its obligations under this Contract.
- 4.3.3 The Contractor acknowledges that:
  - 4.3.3.1 the Council has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this Contract; and
  - 4.3.3.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Disclosed Data;
  - 4.3.3.3 it has satisfied itself of all relevant details relating to:
    - 4.3.3.3.1 the Council Requirements;
    - 4.3.3.3.2 the operating processes and procedures and the working methods of the Council;
    - 4.3.3.3.3 the ownership, functionality, capacity, condition and suitability for use in the Services of the Council Assets; and Council's IT System; and
    - 4.3.3.3.4 the existing contracts (including any licences, support, maintenance and other agreements relating to the Council IT System) which the Contractor will require the benefit of for the provision of the Services.

4.3.4 To avoid doubt the Contractor accepts full responsibility for all matters referred to in Clause 4.3.2 and the Contractor shall not be entitled to make any claim against the Council whatsoever save, if applicable, as provided in Clause 5.3 on any grounds including (without limitation) the fact that incorrect or insufficient information on any matter was given to it by any person whether or not the Council or Council Related Party.

4.3.5 Save as expressly provided in this Contract the Contractor shall in no circumstances be entitled to any additional payment for its encountering and/or dealing with any such circumstances described in Clause 4.3.2 whether unforeseen or otherwise.

#### 4.4 **Status of Warranties**

All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

### 5 **COUNCIL WARRANTIES**

#### 5.1 **No Warranty by Council**

5.1.1 Subject to Clause 5.3, the Council does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

5.1.2 The Contractor acknowledges and confirms to the Council that it has conducted its own analysis and review of the Disclosed Data and will not bring any action against the Council as to the accuracy completeness and fitness for purpose of any Disclosed Data on which it places reliance.

#### 5.2 **No Liability to Contractor**

Subject to Clause 5.3, neither the Council nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

5.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data

5.2.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Contract.

#### 5.3 **Fraudulent Statements**

Nothing in this Clause 5 (Council Warranties) shall exclude any liability which the Council or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently prior to the Effective Date.

**PART 2 – DEPOT, LICENCED PREMISES AND ASSETS  
(To be discussed )**

**6 NATURE OF LAND INTERESTS**

**Grant of Lease for the Depot**

6.1 The Council shall grant to the Contractor and the Contractor shall accept on the Service Commencement Date a Lease in respect of the Depot as set out at Schedule X

**Exclusion of Security for the Lease**

6.2 The Contractor hereby confirms that before it became contractually bound to enter into the tenancy created by the Lease pursuant to this Contract:

6.2.1 The Council served on the Contractor a notice in relation to the tenancy created by the Lease listed at Schedule X (“the Lease Notice”) in a form complying with the requirements to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (“the Order”).

6.2.2 The Contractor, or a person duly authorised by the Contractor, in relation to the Lease Notice made a statutory declaration (“the Lease Declaration”) in a form complying with the requirements of Schedule X of the Order.

6.2.3 The Contractor further confirms that, where a Lease Declaration was made by a person other than the Contractor, the declarant was duly authorised by the Contractor to make the Lease Declaration on the Contractor's behalf.

6.2.4 The Council and Contractor agree to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by the Lease.

**Grant of the Lease**

6.3 The grant of the Lease shall take place at the offices of the Council's solicitors. The term of the Lease relating to the Depot shall commence on the Service Commencement Date.

**Delivery of Engrossments**

6.4 Within ten (10) Working Days after the Service Commencement Date, the Council shall deliver engrossments of the counterpart Lease to the Contractor. The Contractor shall execute and deliver the Lease and shall then execute the original Lease as a deed and send the original Lease to the Contractor.

**Registration**

6.5 The Contractor shall apply for, and procure, registration of the Lease at the Land Registry as soon as reasonably practicable after the Lease is completed. The Council shall use all reasonable endeavours to assist the Contractor in responding to any proper requisitions raised by the Land Registry of such documents that are in the Council's possession relating to the freehold reversion as the Land Registry may request.

**Early Termination**

6.6 If this Contract is terminated in whole or in part or varied for any reason prior to the Expiry Date, the Lease shall automatically cease and determine with effect from the date of termination or variation of this Contract (or, if not granted at the time, the obligation to grant the Lease shall automatically cease to apply). Where the Lease has been entered, the Contractor shall forthwith deliver to the Council the Lease together with all relevant title deeds, releases from any charge and a direction to the Chief Land Registrar to cancel the registered title relating to the Lease. The Contractor shall take all steps as may be proper and reasonable to cancel or assist in the cancellation of all entries at the Land Registry and the Land Charges Registry in relation to the Lease.

**No Compensation**

6.7 The Contractor shall not be entitled to any compensation in respect of any variation of the term of the Lease or the unexpired part of its interest as tenant/licensee under the Lease on assignment or surrender or automatic determination in accordance with this clause.

**Compliance with the Title Deeds**

6.8 The Contractor shall procure that:

6.8.1 the provision of the Services at the Depot by or on behalf of the Contractor shall be carried out in a manner which does not breach any provisions of the Title Deeds relating to the Depot; and

6.8.2 in providing the Services at the Depot, there shall be no action, or omission to act by the Contractor or any Contractor Related Party, which shall give rise to a right for any person to obtain title to or any right or interest over the Depot or any part of it (save in accordance with the terms of this Contract).

**Fellow Contractor Interests**

6.9 In its occupation of the Depot, the Contractor shall recognise the rights of those persons who hold Fellow Contractor Interests, which may give such persons the rights to exclusive use of any part of the Depot concerned without having a formal licence to do so. This is subject to the requirement that the Contractor shall only recognise those Fellow Contractor Interests of which it has been notified.

**7 USE OF THE LICENCED PREMISES**

7.1 The Council hereby permits, by way of licence the Contractor to occupy and use such part or parts of the Licenced Premises as notified by the Council to the Contractor from time to time (the "Licenced Area") and at such times between Monday and Friday inclusive or otherwise during the Contract Period as to be agreed between the Council and the Contractor from time to time, for the purposes only of carrying out the Services, (the "Licence") PROVIDED THAT:

7.1.1 neither the Licence nor the use by the Contractor of the Licenced Area shall create any relationship of landlord and tenant nor any tenancy nor shall exclusive possession of any other part or parts of the Licenced Premises be granted to the Contractor;

7.1.2 the Council retains the absolute right to alter add or remove any part or parts of the Licenced Premises from or to the Licenced Area and the permitted times of use of this licence; and

7.1.3 the Contractor will keep the Licenced Area in good repair and condition and will make good any damage caused during such period of use

7.2 For the purposes of the Contractor gaining access to and egress from the Licenced Area in order to exercise the provisions of the Licence, the Council hereby grants the Contractor a right in common in as far as it is able to do so, and together with all others so authorised over any common corridors, entrance halls, staircases, lifts, landings or such other common areas or means of access in across or upon such premises as necessary for obtaining access to or egress from the Licenced Area (the "Access Rights") PROVIDED THAT the Contractor does not and does not permit such common areas to be blocked or obstructed or otherwise damaged by any users authorised by the Contractor.

7.3 The Licence granted by this Clause 7 shall be for the Contractor its authorised agents and contractors only.

7.4 The Contractor shall not use the Licenced Area nor any other part or parts of the Licenced Premises in respect of which the Access Rights have been granted for any purpose other than that of the Contractor's performance of this Contract.

7.5 The Authorised Officer shall be entitled to serve upon the Contractor a notice in writing requiring the Contractor, within a stated period, such period to be reasonable in the circumstances, to put any such premises into such condition as is reasonably required by Clause 7.4 above and the Contractor shall immediately upon receipt of such notice cause all necessary services to be carried out to comply with such notice. In the event of the Contractor failing to carry out such services, the Council, having given notice to the Contractor shall be at liberty to have such services carried out by such persons as it may choose and the Contractor shall pay to the Council such sum as the Authorised Officer shall certify to have been the cost of executing such services.

7.6 On the expiry or earlier termination of the Contract the Contractor shall immediately vacate the Licenced Area.

## **8 EQUIPMENT AND VEHICLES**

8.1 The Contractor shall ensure that throughout the Contract Period it supplies or makes available in good condition and in working order and within the Annual Sum all such resources and equipment as may be necessary for the proper provision of the Services to the Service Standard including, without limitation, staff, labour, machinery, tools, equipment, materials, transport and delivery facilities, consumables, premises, software, hardware and Vehicles (the "Contractor's Equipment").

8.2 The Contractor shall ensure that all licence fees, consent fees, maintenance fees and royalties relevant to the provision of the Services are paid and up to date throughout the Contract Period and that the Contractor's Equipment is properly maintained in good and substantial repair and condition and replaced when necessary. For the avoidance of doubt the Contractor shall be responsible for the maintenance and replacement of the Council Equipment at its own expense except where it is expressly stated in the Contract Documents that any such maintenance and/or replacement shall be carried out at the Council's expense.

8.3 Any Vehicles provided by the Contractor and used in the performance of the Contract shall be maintained by the Contractor in a safe condition, must be fully insured and must be certified as roadworthy.

8.4 Any specialist equipment used in the performance of the Contract shall be maintained by the Contractor in accordance with the manufacturer's instructions and must not be used or modified in such a way as to negate or diminish any insurance cover which may relate to the equipment or create an additional risk to users of that equipment.

## PART THREE – THE SERVICES

### 9 MOBILISATION

9.1 Mobilisation shall mean the period from the Effective Date to the Service Commencement Date during which the Contractor shall work with the Council, the Fellow Contractors and other contractors in respect of the mobilisation activities, including without limitation and at its own expense:

- 9.1.1 arrange and attend as many meetings with the Council and any former or Fellow Contractors as are reasonably necessary for the successful handover of the Services. Such meetings shall include as applicable senior representatives of the Contractor (including the Contract Manager), any of the Contractor's Sub-Contractors in so far as the same will be directly providing any Services, representatives of the Council (including the Authorised Officer), representatives of any former contractors (if applicable) and any Fellow Contractors (as applicable).
- 9.1.2 preparing and agreeing with the Council an Annual Plan for the first Contract Year;
- 9.1.3 make all necessary provisions required relating to Vehicles, equipment, labour, Sub-Contracts, supplies and materials in order to provide the Services from the Service Commencement Date;
- 9.1.4 prepare and agree a branding for the Services including without limitation for Vehicles and any signage with the Council. All such branding to be in accordance with the Council's branding policy;
- 9.1.5 become familiar with all interfaces and boundaries within the Administrative Area;
- 9.1.6 appraise itself of all information made available to the Contractor regarding the service previously carried out by the Council and its previous provider so that at the Service Commencement Date the Contractor is able to commence all of its duties under the Contract;
- 9.1.7 review the results of any surveys, assessments or other investigations made available to the Contractor relevant to the discharge by the Contractor of its duties previously carried out by others;
- 9.1.8 liaise as appropriate with the Council, any other relevant organisation to ensure smooth transitional arrangements; and
- 9.1.9 liaise with the Council and incumbent service provider regarding transitional arrangements.
- 9.1.10 Fully instructing the Contractor's staff so that they are fully aware of the Services, the Key Performance Indicators and management arrangements;
- 9.1.11 Carrying out activities in relation to TUPE;
- 9.1.12 Provide the Council with:
  - 9.1.12.1 Proof of insurances held;
  - 9.1.12.2 the parent company guarantee, if applicable, in the agreed form;
  - 9.1.12.3 Not used;

- 9.1.12.4 details of the identities, positions and responsibilities and contact details of all relevant staff including, in particular, the Contract Manager and authorised deputy
- 9.1.13 Working with the Council and the other contractors to deliver the Services such that the end user experience is a seamless and smooth transition between contractors and which transition is, as far as possible, invisible to the users except in respect of the ways in which it is improved;
- 9.1.14 Refining the Mobilisation Plan submitted with the Tender and submitting for approval the final Mobilisation Plan; and
- 9.1.15 Undertake any necessary fine tuning of the Service Delivery Plans and submit to the Council for approval.

## **10 SERVICE PROVISION**

- 10.1 With effect from the Service Commencement Date the Contractor shall provide the Services, procuring that the Services are performed to the following standards (the "Service Standard"):
  - 10.1.1 the Services are provided in accordance with all the requirements of this Contract, the Specification, the Service Delivery Plans, Good Industry Practice, Guidance and all applicable Council's Policies, and Legislation with effect from the Service Commencement Date.
  - 10.1.2 the Services are provided to meet the Key Performance Indicators.
  - 10.1.3 the Contractor obtains and maintains all necessary Consents which are required for the provision of the Services and shall provide the Council with a copy of all such Consents if requested to so do by the Council.
  - 10.1.4 the Services are at all times performed: -
    - 10.1.4.1 using all reasonable skill care and diligence;
    - 10.1.4.2 in a manner that is not reasonably likely to be injurious to health or to cause damage to property;
    - 10.1.4.3 in a manner consistent with the Council discharging its statutory duties to the extent that these may have an effect on the Services and as set out in Volume 2 (the Specification);
    - 10.1.4.4 in a manner consistent with and to ensure compliance with any applicable Byelaws in so far as the Contractor is made aware of the same by the Council from time to time;
    - 10.1.4.5 by appropriately qualified, supervised, competent and trained personnel;
    - 10.1.4.6 in compliance with all instructions issued in accordance with this Contract by or on behalf of the Council by the Authorised Officer and which he is empowered to issue under this Contract;
    - 10.1.4.7 in full co-operation with the Council and its contractors;
    - 10.1.4.8 so as not to cause nuisance to or interference with the rights of quiet enjoyment otherwise enjoyed by persons on neighbouring land or land

adjacent to the Depot including the Council's property and Fellow Contractors; and

10.1.4.9 it has sufficient staff at all times to meet its obligations under the Contract and that such staff are of a suitable level of seniority and are sufficiently trained and qualified in the range of skills required; and

10.1.4.10 all staff are courteous and polite and helpful to the public and officers at all times.

10.2 The Contractor's performance of the Services and compliance with the Service Standard shall be monitored in accordance with the agreed procedure in Clause 27.

10.3 The Parties shall, at all times, act in and with complete honesty towards each other and their respective staff and employees. The Contractor and the Council recognise that the success of the Services requires co-operation between them and representatives of each Party and shall discuss and deal with the Services in good faith and shall use their respective reasonable endeavours to resolve any disagreement arising between them relating to the Services.

10.4 The Contractor shall not be relieved or excused of any responsibility, liability or obligation under this Contract by the appointment by the Contractor of any Sub-Contractor. The Contractor shall, as between itself and the Council, be responsible for the selection, pricing, performance, acts, defaults, omissions, breaches and negligence of all its Sub-Contractors, employees and agents. All references in this Contract to any act, default, omission, breach or negligence of the Contractor shall be construed accordingly to include any such act, default, omission, breach or negligence of any such employees, agents or Sub-Contractors.

10.5 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Council, shall unless otherwise expressly stated in this Contract, relieve the Contractor of any of its obligations under the Contract Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

10.6 **Instructions to provide Services and Scheduling**

10.6.1 All instructions to provide Additional Services shall be logged through the Contractors Helpdesk System. The Contractor shall log progress of all Core and Additional Services on the Contractors IT System.

10.6.2 The Contractor shall ensure that its routing, programming and scheduling is accessible through the internet or other easily accessible means by the Council and all Residents throughout the Contract Period, subject to reasonable downtime.

10.7 **Council Cause**

10.7.1 Notwithstanding any other provision of this Contract, if the Contractor has failed to:

10.7.1.1 provide the Services in accordance with the Contract from the Service Commencement Date; and/or

10.7.1.2 comply with its obligations under this Contract,

(each a Performance Default), and can demonstrate that the Performance Default would not have occurred but for a Council Cause, then (subject to the Contractor fulfilling its obligations in this Clause 10):

- 10.7.2 the Contractor shall not be treated as being in breach of this Contract to the extent the Contractor can demonstrate that the Performance Default was caused by the Council Cause;
- 10.7.3 the Council shall not be entitled to exercise any rights that may arise as a result of that Performance Default to terminate this Contract pursuant to Clause 34 (Termination).
- 10.7.4 In order to claim any of the rights and/or relief referred to in clause 10.7.1, the Contractor shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that a Council Cause has caused, or is reasonably likely to cause, a Performance Default, give the Council notice (a “Relief Notice”) setting out details of:
  - 10.7.4.1 the Performance Default;
  - 10.7.4.2 the Council Cause and its effect, or likely effect, on the Contractor’s ability to meet its obligations under this Contract;
  - 10.7.4.3 any steps which the Council can take to eliminate or mitigate the consequences and impact of such Council Cause; and
  - 10.7.4.4 the relief claimed by the Contractor.
- 10.7.5 Following the receipt of a Relief Notice, the Council shall as soon as reasonably practicable consider the nature of the Performance Default and the alleged Council Cause and whether the Council agrees with the Contractor’s assessment set out in the Relief Notice as to the effect of the relevant Council Cause and its entitlement to relief, consulting with the Contractor where necessary.
- 10.7.6 The Contractor shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of a Council Cause.
- 10.7.7 If a Dispute arises as to:
  - 10.7.7.1 whether a Performance Default would not have occurred but for a Council Cause; and/or
  - 10.7.7.2 the nature and/or extent of the relief claimed by the Contractor,either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Performance Default.

## 10.8 **Publicity**

- 10.8.1 The Council may publish information about the Services as it may deem appropriate from time to time and may provide copies and details of the Contract to any government department or other body having the purpose of compiling precedents. The Council shall prior to publication in accordance with this Clause 10.9 use its reasonable endeavours to consult with the Contractor about the content of the publication if the Contractor’s identity is disclosed in the publication.

- 10.8.2 Unless the Council has given its prior written approval, the Contractor shall not by itself, its employees or agents, and shall procure that its Sub-Contractors shall not:
- 10.8.2.1 communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract; and
  - 10.8.2.2 permit photography or filming in or upon any property used in relation to the Contract.
- 10.8.3 Except where the Contractor is promoting its business generally, the Contractor shall ensure that all branding in relation to the Services complies with:
- 10.8.3.1 the Contractor's branding policies; and
  - 10.8.3.2 the usage of the Contractor's name and logo.

## **11 CONFLICT OF INTEREST**

### **11.1 Conflict**

The Contractor shall not voluntarily enter into any arrangement which results in a conflict between any duty or obligation imposed by the arrangement and its obligations under this Contract. This Clause 11.1 shall not be interpreted to mean that the Contractor may not acquire or maintain other properties in the local vicinity but rather that it shall not do so to the detriment of this Contract or the Services.

### **11.2 Prejudice**

The Contractor shall not voluntarily enter into any arrangement which shall prejudice its ability to perform the Services under this Contract.

### **11.3 Resolution**

11.3.1 In the event of conflict under Clause 11.1 or prejudice under Clause 11.2 the Contractor shall use all reasonable endeavours to resolve the conflict or eliminate the prejudice so far as is possible.

11.3.2 Notwithstanding this Clause 11.1, in the event that conflict or prejudice of a type referred to in Clauses 11.1 and 11.2 does arise (voluntarily or not) the Contractor shall (upon becoming aware of the same) notify the Authorised Officer of the conflict or prejudice as soon as reasonably practicable.

## **12 CONTRACTOR'S PROPOSALS AND SERVICE DELIVERY PLANS**

### **12.1 Priority**

For the avoidance of doubt, the Specification shall at all times have priority over the Contractor's Proposals, which include the Service Delivery Plans, and the Contractor shall be obliged to comply with the Specification and provide the Services in accordance with the Specification.

### **12.2 Service Delivery Plans**

12.2.1 The Contractor shall implement, develop and maintain a Service Delivery Plan ("SDP"), which at the Contract Date shall comprise the Service Delivery Plans set out in Volume 3.

- 12.2.2 The Contractor shall continually review and maintain the Service Delivery Plans (SDPs) and update the SDPs annually to take into account any changes to the programming of the Services or changes to the Services. The updated draft Service Delivery Plans shall be submitted (2) two Months prior to the end of the Contract Year for approval by the Council. The draft Service Delivery Plans shall be accompanied by such evidence or supporting documentation as is required for the Council to review any changes proposed.
- 12.2.3 The Council in its discretion may either:
  - 12.2.3.1 Approve the draft Service Delivery Plans. The Contractor shall then implement the draft Service Delivery Plans in the applicable Contract Year; or
  - 12.2.3.2 reject the draft Service Delivery Plans and the Parties shall meet to discuss the plan and agree any further amendments.
- 12.2.4 If the Parties are unable to agree to the plan, then the Service Delivery Plans for the previous year shall be implemented subject to reasonable adjustments made by the Council.

### 12.3 Amendments

- 12.3.1 The Contractor may not make any material amendment to any of the Contractor's Proposals or Service Delivery Plans unless
  - 12.3.1.1 an amendment is strictly necessary to comply with Legislation, the Specification, any relevant licences or consents or Good Industry Practice and
  - 12.3.1.2 it has obtained the prior consent of the Council.
- 12.3.2 The Council may propose an amendment to any Service Delivery Plans s at any time, which shall be regarded as a Council Change unless the amendment arises from Legislation or from a Performance Default.
- 12.3.3 Neither the incorporation of any Service Delivery Plan (save in the case of an amended Service Delivery Plan prepared by the Council under Clause 12.3.2) in this Contract nor the receipt or approval of any proposal for any modification nor any supporting or further information shall constitute a waiver or variation by the Council of any obligation of the Contractor under this Contract and the Contract Documents and the Specification.
- 12.3.4 For the avoidance of doubt, any amendment to the Contractor's Proposals shall not comprise a Change, unless otherwise agreed between the Parties.

## 13 INTELLECTUAL PROPERTY RIGHTS

- 13.1 Except as expressly set out in this Contract, during this Contract:
  - 13.1.1 The Council shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or is licensors in:
    - 13.1.1.1 The Contractor's Materials;

- 13.1.1.2 Any Background IPR owned by the Contractor and
- 13.1.2 The Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Council or its licensors in:
  - 13.1.2.1 The Council Software
  - 13.1.2.2 The Council Data
  - 13.1.2.3 The Database
  - 13.1.2.4 The Council's Materials; and
  - 13.1.2.5 Third Party Software.
- 13.2 Where either Party acquires, by operation of law, title to Intellectual Property Right that is inconsistent with the allocation of title set out in clause 14.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 13.3 The Contractor shall indemnify the Council (calculated on a full indemnity basis) against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Rights of the Council or its licensors set out in Clause 14.1.2, except to the extent that they have been caused by or contributed to by the Council's acts or omissions

#### **14 LICENCES GRANTED BY THE CONTRACTOR**

**Note to Tenderers:**

The Contractor will be required to use their own IT System. The Council will require reports to be generated through this system. Tenderers should set out in their Tenders how they will approach the Helpdesk function and IT systems to service the contract.

- 14.1 The Contractor hereby grants to the Council a licence of the Contractor Software and the Contractor's Background IPRs on the Standard Licence Terms.
- 14.2 The Contractor shall procure that the owners or the authorised licensors of any Third-Party Software hereby grants a direct licence to the Council on the Standard Licence Terms
- 14.3 The Contractor shall, if requested by the Council in accordance with the exit provisions in the Specification, grant or procure the grant to the Replacement Contractor of a licence to Use any Contractor Software, Contractor's Background IPRs or Third-Party Software on the Standard Licence Terms subject to the Replacement Contractor entering reasonable confidentiality undertakings with the Contractor.
- 14.4 The Contractor hereby grants to the Council a non-exclusive licence to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Council under this Contract.

**15 LICENCES GRANTED BY THE COUNCIL**

- 15.1 The Council will not be granting any license to the Contractor any data provide by the council to the contractor will be subject to clause 16.1

**16 ASSIGNMENT OF IPR IN DATABASES AND COUNCIL DATA**

16.1 Council Data

- 16.1.1 The Contractor acknowledges that the Council Data is the property of the Council and the Council hereby reserves all Intellectual Property Rights which may subsist in the Council Data.
- 16.1.2 For the avoidance of doubt, the Contractor shall not acquire any right in, or title to, any part of the Council Data, whether existing prior to the Effective Date or created after such date.
- 16.1.3 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Council Data.
- 16.1.4 The Contractor shall not and shall procure that the Sub-contractors and Employees shall not store, copy, disclose, or use the Council Data except as strictly necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Council.
- 16.1.5 The Contractor shall take responsibility for preserving the integrity of that Council Data and preventing the corruption or loss of that Council Data.
- 16.1.6 The Contractor shall ensure that any system on which the Contractor holds any Council Data, including back-up data, is a secure system.
- 16.1.7 The Contractor shall ensure that, when disposing of any hardware during performing the Services, it shall erase from any computers, storage devices and storage media any software containing all Council Data.
- 16.1.8 If the Council Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Council may:
- 16.1.8.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Council Data and the Contractor shall do so as soon as practicable but not later than 24 hours from the occurrence of the corruption, loss or degradation; and/or
- 16.1.8.2 itself restore or procure the restoration of Council Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 16.1.9 If at any time the Contractor suspects or has reason to believe that Council Data has or may become corrupted, lost or sufficiently degraded in any way for any reason or has or may have been subject to unauthorised disclosure, then the Contractor shall notify the Council immediately and inform the Council of the remedial action the Contractor proposes to take.

16.2 Databases

- 16.2.1 The Contractor hereby assigns to the Council, with full title guarantee, title to and all rights and interest in the information contained in or stored on the Database or shall procure that the first owner of the Database assigns it to the Council on the same basis.
- 16.2.2 The assignment under clause 16.2.1 shall either take effect on the Service Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Database, as appropriate.
- 16.2.3 The Contractor shall waive or procure a waiver of any moral rights in the Database assigned to the Council under this Contract.
- 16.2.4 To the extent that it is necessary for the Council to obtain the full benefits of ownership of the Database, the Contractor hereby grants to the Council and shall procure that any relevant third-party licensor shall grant to the Council a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use the Database.

## **17 PROJECT SPECIFIC IPR**

- 17.1 The Contractor hereby assigns to the Council with full title guarantee title to and all rights and interest in the Project Specific IPRs or shall procure that the first owner of the Project Specific IPRs assigns them to the Council on the same basis.
- 17.2 The assignment under clause 17.1 shall either take effect on the Service Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPR.
- 17.3 The Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the Council under this Contract.
- 17.4 If so requested to do so the Contractor shall without charge to the Council execute all documents and do all such further acts as the Council may require to perfect the assignment under clause 17.1 or shall procure that the owner of the Project Specific IPR does so on the same basis.
- 17.5 The Council shall grant to the Contractor a licence of the Project Specific IPR to enable the Contractor to provide the Services.

## **18 MALICIOUS SOFTWARE**

- 18.1 The Contractor shall, as an enduring obligation throughout the Contract Period, deploy latest versions of anti-virus software (including the latest versions of available anti-virus definitions from an industry accepted anti-virus software vendor) on its own computer systems to check for, contain the spread and minimise the impact of, and delete Malicious Software to prevent Malicious Software from adversely impacting provision of the Services or operation of the Council's IT System (except to the extent otherwise agreed by the Parties).
- 18.2 Notwithstanding clause 18.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes an adverse impact on the operational efficiency of the Services or the Council's business or loss or corruption of Council Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 18.3 Any cost arising out of the actions taken in compliance with the provisions of clause 19.2 shall be borne by the Contractor, unless the Contractor can demonstrate to the reasonable

satisfaction of the Council that the Malicious Software could not have been deleted from or protected against penetration into the Council's IT System through compliance with its obligations pursuant to clause 18.1 in which case each party shall bear its own costs.

## **19 HEALTH AND SAFETY**

19.1 The Contractor, in performing the Services, shall ensure that it and all Contractor Related Parties shall:-

19.1.1 comply with all applicable Health and Safety Legislation including without limitation compliance with the requirements under the Management of Health and Safety at Work regulations 1999 to carry out a suitable and sufficient risk assessment;

19.1.2 comply with all applicable health and safety precautions necessary include all safe methods of work in order to protect the health and safety of all staff, Council Related Parties, and any other persons including (without limitation) members of the public;

19.1.3 comply with its health and safety plan as developed, maintained and updated from time to time;

19.1.4 comply with the Council's health and safety policies as amended and notified to the Contractor from time to time;

19.1.5 be responsible for the suitable and safe use of the equipment used in the provision of the Services; and

19.1.6 comply with all reasonable instructions given to it by the Council and/or the police and/or fire officers concerning matters arising out of or connected to the Services and representing a danger to persons or property.

19.2 For the avoidance of doubt the Council shall not be obliged to make and the Contractor shall not be entitled to receive any additional payment by reason of: -

19.2.1 any steps which the Council requires the Contractor to take for health or safety reasons (including at the Council's request, the appointment of an independent health and safety adviser to review the Contractor's working procedures); and/or

19.2.2 any part of the Services being omitted because of a stoppage required by the Council due to health or safety reasons.

19.3 Reporting

19.3.1 The Contractor shall comply with the requirements of the Specification in respect of reporting incidents including without limitation:

19.3.1.1 notify the Council of any relevant new hazard or any relevant special precaution found to be necessary and any actions required to be taken by the Council;

19.3.1.2 notify the Council promptly of all incidents and accidents relating to the Services reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 together with any serious incidents and accidents involving member of the public or the Council's employees and shall confirm in writing to the Council any action taken by

the Contractor or recommended to be taken by the Council to prevent a reoccurrence;

19.3.1.3 keep a full record of all incidents and accidents relating to the Services which shall be available for inspection by the Council upon reasonable notice;

19.3.1.4 promptly, upon it becoming aware, provide the Council with full details of any significant unsafe event which related in any way to the Services.

## **20 BUSINESS CONTINUITY**

20.1 The Contractor shall have and maintain an up to date Business Continuity Plan which shall work with and be co-ordinated with the Council's Business Continuity Plan and major emergency planning and shall comply with the provisions set out in the Specification. The Contractor acknowledges that, under the Civil Contingencies Act 2004 the Council is obliged to ensure that its services (and therefore its contractors who are delivering services on its behalf) are able to operate effectively at all times to meet the needs of the local residents and addresses the needs of that workforce in the event of a major civil incident.

20.2 In the event of any national, regional or local emergency or incident the Contractor shall comply with the Specification and shall without limitation:

20.2.1 provide, at the Council's request, whatever support and assistance may reasonably be required by the Council in response to the event; and

20.2.2 comply with its Business Continuity Plan and the Council's Business Continuity Plan and any emergency plan as applicable.

20.3 When the Council advises the Contractor of an Emergency within the Administrative Area the Contractor shall immediately appoint a senior member of its management as "liaison officer". All instructions given to the "liaison officer" will take precedence over other instructions and all requests for labour, plant and material will be met immediately, whether this disrupts the Contractor's normal programme of work. The Contractor shall make all reasonable endeavours to provide the requested labour, plant and materials and attend to the emergency within 2 (two) hours of notification

## **PART 3 - EMPLOYEES**

### **21 TUPE AND EMPLOYEES**

21.1 The Contractor shall comply with Schedule X.

### **22 EMPLOYEES**

#### **22.1 Contract Manager**

22.1.1 The Contractor shall employ a representative the identity of whom will be subject to the prior approval of the Council (not to be unreasonably withheld or delayed) to act as the Contract Manager during the Contract Period. The Contract Manager shall be a dedicated role and shall be based in the Contract area.

22.1.2 The Contract Manager shall have expertise in practical grounds maintenance and street Cleansing and all other members of the management and supervisory and management team shall possess the formal and practical qualifications appropriate to their tasks.

22.1.3 The Contract Manger shall be the authorised representative of the Contractor and be deemed to be empowered on behalf of the Contractor for the purposes connected with this Contract.

22.1.4 The Contract Manager shall be entitled to appoint one or more persons to act as his deputy and in the event that he does so shall notify the Council accordingly in writing and shall stipulate in such notice the name, telephone number email address and the responsibilities allocated to such deputy.

22.1.5 The Contract Manager shall be available for regular meetings with the Council and/or relevant stakeholder groups as and when required.

#### **22.2 Authority of Contract Manager**

The Contract Manager shall have full authority to act on behalf of the Contractor for all purposes of this Contract. The Council and the Authorised Officer shall be entitled to treat any act or omission of the Contract Manager in connection with this Contract as being expressly authorised by the Contractor (save where the Contractor has notified the Authorised Officer that such authority has been revoked) and the Council shall not be required to determine whether any express authority has in fact been given.

#### **22.3 Termination of Appointment**

22.3.1 The Contractor may terminate the appointment of the Contract Manager and appoint a substitute. Where the Contractor wishes to do so it shall by written notice to the Council propose a substitute for approval by the Council (such approval not to be unreasonably withheld or delayed).

22.3.2 The Contractor shall replace any Contract Manager whom the Council, acting reasonably and giving reasons, deems to be unacceptable, within five (5) days of any such request from the Council.

22.3.3 The name and address of the Contract Manager shall, at all times, be made known to the Council by the Contractor as shall a telephone number on which the Contract Manager or his delegate can be contacted twenty-four (24) hours a day.

#### 22.4 Authorised Officer

The Council shall appoint an individual to be the Authorised Officer and his deputy during the Contract Period and keep the Contractor informed of the identity from time to time of the Authorised Officer and deputy.

#### 22.5 Authority of the Authorised Officer

22.5.1 The Authorised Officer shall have full authority to act on behalf of the Council for all purposes of this Contract. The Contractor shall be entitled to treat any act of the Authorised Officer in connection with this Contract as being expressly authorised by the Council (save where the Council has notified the Contractor that such authority has been revoked) and the Contractor shall not be required to determine whether any express authority has in fact been given.

22.5.2 No act or omission of the Council, the Authorised Officer or any officer, employee or other person engaged by the Council shall, except as otherwise expressly provided in this Contract: -

22.5.2.1 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

22.5.2.2 in the absence of an express order or authorisation under the Change Control Mechanism, constitute or authorise a Council Change.

22.5.3 The Council shall not be responsible for and the Contractor shall not be entitled to rely on and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should the Contractor act on any notice, communication or other purported instruction given by a person alleging to act for and on behalf of the Council unless such person was the Authorised Officer.

22.5.4 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 of the Authorised Officer, taking account of the need for liaison and continuity in respect of the Services. 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 inconvenience to the Contractor in the execution of its obligations under this Contract).

#### 22.6 Safeguarding Children and Vulnerable Adults

22.6.1 Where the Contractor is providing a Regulated Activity, the Contractor shall be a Regulated Activity Provider (as defined by the SVGA 2006) with ultimate responsibility for the management and control of the Regulated Activity (as defined by the SVGA 2006) provided under this Contract and for the purposes of the SVGA 2006, the Contractor shall:

22.6.1.1 comply with all its obligations under the SVGA 2006 including without limitation information sharing, Disclosure and Barring Service (DBS, as

defined by the SVGA 2006) referral obligations and checking that a person is subject to monitoring;

- 22.6.1.2 maintain and implement a safeguarding policy which is in general compliance with the Council's safeguarding policies;
- 22.6.1.3 immediately inform the Authorised Officer if any action undertaken in relation to any breach of the Contractor's safeguarding policies;
- 22.6.1.4 be appropriately registered in relation to all persons who are or will be employed or engaged by the Contractor in the provision of the Regulated Activity;
- 22.6.1.5 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check undertaken through the DBS including a check against the adults' barred list or the children's barred list, as appropriate;
- 22.6.1.6 monitor the level and validity of the checks under Clause 5 for each member of staff;
- 22.6.1.7 not employ or engage any person who discloses any Convictions or ASBOS, or who is found to have any Convictions or ASBOS following the results of a DBS check, without the Council's prior written consent;
- 22.6.1.8 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he would not be suitable to carry out the Regulated Activity or who may otherwise present a risk to a recipient of the Services;
- 22.6.1.9 in accordance with the SVGA 2006, refer information about any person providing the Regulated Activity to the DBS where it removes permission for such person to provide the Services (or would have, if such person had not otherwise ceased to provide the Services) because, in its opinion, such person has harmed or poses a risk of harm to a recipient of the Services;
- 22.6.1.10 immediately provide the Council with all information that the Council may reasonably require to enable the Council to verify that the Contractor has satisfied its obligations under this Clause 22.6 and the SVGA 2006 and immediately inform the Council if there is any reason to believe that any obligations under the SVGA 2006 are not being complied with in relation to the Services; and
- 22.6.1.11 ensure that all personnel working with or alongside children have regard to the need to safeguard and promote the welfare of children.

22.6.2 The Contractor acknowledges that the Council may acting in accordance with the SVGA 2006 disclose information in relation to an Employee where required to do so by the Independent Safeguarding Authority without consultation with the Contractor.

## 22.7 Conduct of staff

The Council (acting reasonably) may:

- 22.7.1 instruct the Contractor that disciplinary action is taken against any employee of the Contractor or any Sub-Contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties (in which case the Council shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or
- 22.7.2 where the Council has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s).
- 22.7.3 The Contractor shall have procedures in place to ensure that:
  - 22.7.3.1 all policies, codes and procedures (for example, but not limited to, health and safety, fire risks and precautions and emergency procedures) adopted by the Contractor and required by the Contract are complied with by all staff;
  - 22.7.3.2 there are sufficient supervisory employees to ensure that all the Contractor's employees engaged in the provision of the Services are at all times adequately supervised and properly perform their duties; and
  - 22.7.3.3 appropriate disciplinary action is taken against any employees, including those of Sub-Contractors, who transgress the Contractor's staff code of conduct and/or the provisions of this Contract.
- 22.7.4 The Contractor shall not allow their employees to receive, request, solicit or act in such a manner as to induce payment, or gratuities of any kind, for any work to be carried out in accordance with the Contract.
- 22.7.5 The Contractor shall submit a copy of a Contract specific 'Staff Code of Practice' to the Authorised Officer one month prior to contract commencement for approval.

**22.8 Apprenticeships**

- 22.8.1 The Contractor shall run an approved apprenticeship scheme. The Contractor shall employ no fewer than ONE (1) apprentices at all times throughout the Contract Period with such apprentices being engaged full-time on the provision of the Services (subject to any training requirements).

**22.9 Resources and Training**

- 22.9.1 The Contractor shall throughout the Contract Period procure that:
  - 22.9.1.1 there shall be at all times a sufficient number of staff (including all relevant grades of supervisory staff) engaged in the provision of the Services with the requisite level of skill and experience. This obligation shall include ensuring that:
    - 22.9.1.1.1 there are sufficient staff to cover periods of holiday, sickness, other absences and anticipated and actual peaks in demand for each of the Services; and
    - 22.9.1.1.2 sufficient supervisors to monitor the performance of the staff;

- 22.9.1.2 all staff whether employed or temporary or agency staff receive such induction, training and supervision as is necessary to ensure the proper performance of the Services under this Contract;
  - 22.9.1.3 ensure that all the staff engaged by the Contractor in and about the provision of the Services are and at all times remain properly and sufficiently trained, skilled, competent, instructed and supervised with regard to:
    - 22.9.1.3.1 duty or duties which that person has to perform;
    - 22.9.1.3.2 any relevant aspect of the Contract Documents and Service Standard that may relate thereto;
    - 22.9.1.3.3 the proper use of the handheld equipment and the Council's IT System as applicable to the role the member of staff undertakes;
    - 22.9.1.3.4 the rules, procedures, policies and statutory and regulatory requirements concerning the provision of the Services and health and safety at work and all other rules and procedures relevant to the duties which that person has to perform; and
  - 22.9.1.4 ensure that every member of staff:
    - 22.9.1.4.1 carries out their duties and conducts themselves in an orderly and courteous manner;
    - 22.9.1.4.2 maintain the highest professional standards, courtesy and consideration;
    - 22.9.1.4.3 are trained to recognise situations which may involve any actual or potential risk of personal injury to any person (including members of the public) and the need to make such situations safe; and
    - 22.9.1.4.4 is able to deal and communicate effectively and coherently with members of the public in a helpful, polite and restrained manner;
  - 22.9.1.5 ensure all drivers hold valid driving licences and that the driving licences are checked regularly to ensure they are still valid;
  - 22.9.1.6 ensure that if any member of staff appears to be under the influence of alcohol or drugs or whose attention may be impaired through the effect of drugs (whether prescribed by a medical practitioner) are relieved from duties immediately;
  - 22.9.1.7 notify the Council in the event of an emergency occurring in the provision of the Services;
  - 22.9.1.8 ensure that its staff carry out their duties and otherwise conduct themselves in such a way as to cause no unreasonable or unnecessary disruption to the work of any of the Council's staff or staff of any Fellow Contractor.
- 22.9.2 The Contractor shall submit to the Council before the Service Commencement Date and update (managers and supervisors only) as necessary during the Contract Period,

the names and details of the management, supervisors, charge hands and workers to be employed on the Contract.

22.9.3 The Contractor shall maintain training records for its employees, which are to be open for inspection by the Council on request.

#### 22.10 Personnel Policies and Procedures

The Contractor shall procure that there are set up and maintained by it and by all Sub-Contractors involved in the provision of the Services, personnel policies and procedures covering all relevant matters (including discipline, grievance, equal opportunities and health and safety). The Contractor shall procure that the terms and implementation of such policies and procedures comply with Legislation and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to the Council.

#### 22.11 Conduct

22.11.1 The Contractor shall require its staff at all times while engaged in the provision of the Services to be properly and presentably dressed in appropriate clothes or uniforms, work wear, protective and reflective clothing approved by the Council, so that they are recognisable, visible and readily identifiable as employees engaged in a partnership activity with the Council. All staff shall always wear identification badges in such a manner that they are visible and legible.

22.11.2 All staff shall be polite and courteous to Residents and present a positive image of the Service. The Contractor shall, in the performance of their duties, have due regard for the potential consequences of the actions of its staff, and the image they project, when dealing with the public. Staff shall carry out their duties and conduct themselves lawfully in an orderly manner and cause no annoyance, offence, inconvenience or disruption to any Service user, stakeholder, or Authorised Officer.

#### 22.12 Industrial Action

22.12.1 In the event of industrial action by the Contractor's employees it remains the Contractor's responsibility to meet the requirements of the Contract. The Contractor must inform the Authorised Officer immediately of any impending or actual dispute which may affect the Contractor's ability to provide the Services to the Service Standard.

22.12.2 In the event of industrial disputes by staff employed directly by the Council or other contractors affecting the Services provided by the Contractor, the Contractor shall be required to co-operate with the Authorised Officer or its duly authorised representative in order to ensure the continued provision of the Services or to agree the level of Services deemed by the Authorised Officer to be satisfactory. If the standard of performance of the Services is substantially affected by such industrial action, payment for such Services will be agreed between the Authorised Officer and the Contractor and, in default of agreement, the matter shall be dealt with in accordance with Clause 44.

## **23 EQUALITIES**

- 23.1 In the performance of the Services and its dealings with the Council, Fellow Contractors, Residents and Council Related Parties, the Contractor shall comply and shall ensure that its employees, agents and Sub-Contractors comply with:
- 23.1.1 Human Rights Act 1998 as if the Contractor were a public body as defined in the Human Rights Act 1998;
  - 23.1.2 all Equalities Legislation and all relevant guidance and codes of practice relating to equal opportunities;
  - 23.1.3 the Council's equal opportunities policies and procedures including, but not limited to, the Council's diversity policies as may be adopted and amended from time to time as notified to the Contractor; and
  - 23.1.4 the Council's whistle blowing policy as may be adopted and amended from time to time as notified to the Contractor.
- 23.2 The Contractor shall inform the Authorised Officer as soon as the Contractor becomes aware of any legal proceedings or complaint brought or likely to be brought against the Contractor under the Legislation set out in Clauses 23.1.1 and 23.1.2 or the policies set out in Clauses 23.1.3 and 23.1.4.
- 23.3 Where any investigation is conducted or proceedings are brought arising directly or indirectly out of the provision of the Services or any other action by the Contractor or its employees, agents or Sub-Contractors and where the Contractor is found to have breached its obligations under this Clause 24, the Council shall be entitled to recover from the Contractor the full cost it may have incurred in such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.
- 23.4 The Contractor shall not at any time unlawfully discriminate directly or indirectly in relation to employing any person for the purposes of performing the Services on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise. For the purposes of this Clause 24.4 employing a person shall include, without limitation, recruiting, appointing, selecting, training, promoting, remunerating, subject to a detriment, disciplining and dismissing.
- 23.5 Without prejudice to the generality of Clauses 23.1 and 23.4, the Contractor shall at all times comply with Equalities Legislation in respect of its treatment of its employees and in the performance of the Services. In particular, the Contractor shall in its performance of the Contract, take (and shall ensure that its servants, agents, employees and Sub-Contractors take) all reasonable steps to eliminate unlawful discrimination and harassment, promote equality of opportunity between men and women and people of different racial groups and promote good race relations within the meaning and scope of the Act. The Contractor shall also ensure that it and its servants, agents, employees and Sub-Contractors provide all relevant information in this regard to the Council so that the Council can assess its own compliance with its general and specific duties under the Act.
- 23.6 The Contractor shall comply with the guidance issued by the Equality and Human Rights Commission in relation to the Equality Act 2010 (or any replacement guidance and/or

publication). To the extent that it has not been superseded by the aforementioned guidance the Contractor shall also as far as practicable and to the reasonable satisfaction of the Council, follow the practical guidance, recommendations and advice contained in the Code of Practice for the elimination of discrimination on the grounds of sex and marriage and the promotion of equality of opportunity in employment and the Code of Practice on equal pay (or any replacement publications) issued by the Equal Opportunities Commission (now the Equality and Human Rights Commission). In particular, and without prejudice to the foregoing, the Contractor shall operate equal opportunities and equal pay policies which, so far as practicable, comply fully with the practical guidance, recommendations and advice set out in these Codes.

- 23.7 The Contractor shall, as far as practicable and to the reasonable satisfaction of the Council, provide at the Contractor's own expense all such facilities as may be necessary to enable any duly authorised disabled employee or agent of the Council to visit the Contractor (or the Contractor's own premises) for any purpose relating to the Contract. In meeting these obligations, the Contractor shall at all times have regard to the disability provisions of the Equality Act 2010 and the Code of Practice on employment and occupation (or any replacement publication) issued by the Disability Rights Commission (now the Equality and Human Rights Commission) and the guidance on the Equality Act 2010 issued by the Equality and Human Rights Commission.
- 23.8 Where in connection with this Contract the Contractor, its agents or Sub-Contractors, or the employees are required to carry out the Services on the Council's premises or alongside the Council's employees on any other premises, the Contractor shall comply with the Council's own employment policy and codes of practice relating to discrimination and equal opportunities.
- 23.9 The Contractor shall:
- 23.9.1 provide the Council with all information reasonably requested by the Council to allow it to monitor compliance with this Clause 23;
  - 23.9.2 twelve (12) months from the Service Commencement Date and annually thereafter collect (and monitor) by racial group, gender and disability information on:
    - 23.9.2.1 the number of employees in post and at what grade;
    - 23.9.2.2 the numbers of applicants for employment, training and promotion;
    - 23.9.2.3 the number of employees who receive training;
    - 23.9.2.4 the number of employees who are involved in grievance procedures; including harassment, victimisation and discrimination complaints;
    - 23.9.2.5 the number of employees who are subject to disciplinary procedures; and
  - 23.9.3 present a report containing the information required by Clause 24.9.2 to the Council within 30 days of each anniversary of the Service Commencement Date.
- 23.10 Where it appears to the Contractor in relation to particular work of the employees, either that the employees include no members of a particular racial group doing that work or that members of that racial group are under-represented amongst employees doing that work compared to their representation in the employees as a whole or in the population from which employees as a whole or in the population from which employees are normally recruited, the Contractor undertakes the following actions as may be appropriate and reasonably practicable:

- 23.10.1 the placing and use of job advertisements to reach members of such racial groups and to encourage their applications;
  - 23.10.2 the use of employment agencies and careers offices in areas where members of such racial groups live and work;
  - 23.10.3 the promotion of recruitment and training schemes for school leavers and/or unemployed persons intended to reach members of such racial groups.
- 23.11 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Contractor's performance of this Contract being in contravention of the Human Rights Act 1998 and/or Equalities Legislation and all relevant guidance and codes of practice relating to equal opportunities, the Contractor shall free of charge:
- 23.11.1 provide any information requested in the timescale allotted;
  - 23.11.2 attend any meetings as required and permit employees to attend;
  - 23.11.3 promptly allow access to and investigation of any documents or data deemed to be relevant;
  - 23.11.4 allow itself and any employees to appear as witness in any ensuing proceedings; and
  - 23.11.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 23.12 Where any investigation is conducted or proceedings are brought as referred to in Clause 23.11 which arise directly or indirectly out of any act or omission of the Contractor, its agents or Sub-Contractors, or the employees, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Council with respect to all Losses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party, except where such finding relates to or is directly attributable to the Council.
- 23.13 In the event that the Contractor enters into any Sub-Contract in connection with this Contract, it shall impose obligations on its Sub-Contractors in terms substantially the same to those imposed on it pursuant to this Clause 23.
- 23.14 The Contractor shall assist the Council to comply with its obligations and duties arising out of the equality standard for local government and/or any subsequent guidance or framework relating to the Council's diversity duties, the Human Rights Act 1998 and Equalities Legislation.

## **Part 4 – Monitoring**

### **24 QUALITY ASSURANCE AND COMPLAINTS**

#### **24.1 Quality Assurance:**

24.1.1 At least thirty (30) days prior to the Effective Date the Contractor shall submit to the Authorised Officer a proposed quality management system for the services complying with or working towards the quality standards set out in the Specification.

24.1.2 The Contractor shall, following the Effective Date:

24.1.2.1 ensure the effective operation of and implementation of the quality assurance system;

24.1.2.2 audit the quality assurance system at regular intervals and report the findings of such audit to the Contractor and the Council;

24.1.2.3 review the quality assurance system at intervals agreed with the Council to ensure their continued suitability and effectiveness; and

24.1.2.4 liaise with the Council on all matters relating to quality assurance.

24.1.3 The Council may carry out periodic audits of the quality assurance systems at approximate intervals of three (3) months and may carry out other periodic monitoring, spot checks and auditing of the Contractor's quality systems. The Contractor shall procure that the Council shall have a like right in respect of any relevant Sub-Contractors. The Contractor shall co-operate and shall procure that any relevant Sub-Contractor co-operates with the Council including providing it with all information and documentation which it reasonably requires in connection with its rights under this Clause 24.1.

#### **24.2 Complaints**

24.2.1 Without limitation to the generality of Clause 25 below, the Contractor shall comply with the complaint's requirements set out in the Specification.

24.2.2 A copy of the record of all complaints made in relation to the performance of the Services shall be kept by the Contractor for inspection during normal opening hours by the Council on reasonable notice and the Contractor shall use reasonable endeavours to investigate any complaint and where possible, remedy the same to the extent to which such complaint amounts to a failure to comply with any obligations under this Contract as soon as reasonably practicable. The Contractor shall inform the Authorised Officer of its findings and proposals if so, requested by the Authorised Officer.

### **25 PERFORMANCE MONITORING**

25.1 Throughout the Contract Period, the Parties shall work together to ensure that the Contract and the Contractor's performance of the Services represent value for money and continuous improvement for the benefit of the Council.

25.2 The Contractor shall institute at the Commencement Date and maintain throughout the Contract Period systems designed to ensure that the Services are performed and monitored in

accordance with this Contract and the Contractor shall comply with the provisions of the Monitoring and Reporting performance standards.

25.3 Governance

25.3.1 The parties shall comply with the provisions in relation to the management and governance of this Contract.

**26 SERVICE IMPROVEMENTS AND ADDED VALUE**

26.1 **Service Improvements**

26.1.1 The Contractor shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services in accordance with this Clause 26.1. In addition, the Council shall be entitled to require specific improvements to the Services to be made by the Contractor.

26.1.2 As part of the obligation on the Contractor, the Contractor shall report annually by no later than October of each Contract Year on:

26.1.2.1 new or potential improvements to the Services including the quality, responsiveness, procedures, methods, likely performance mechanisms and customer support services in relation to the Services;

26.1.2.2 changes to Equipment or Vehicles which may result in greater efficiency or productivity gains; and/or

26.1.2.3 new or potential improvements in scheduling or programming which might result in efficiency or productivity gains or in reduction of operational risk; and

shall for any such improvement or change detail, with justifications, how any savings would be made and how these should be shared between the Council and Contractor which shall be no greater than [25%] for the Contractor. This report shall be the "Efficiency Plan".

26.1.3 The Contractor shall ensure that the information that it provides to the Council shall be sufficient for the Council to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Council requests.

26.1.4 If the Council wishes to incorporate any improvement identified by the Contractor, the Council shall send the Contractor a Change Request and the Contractor shall in accordance with the Change Control Mechanism.

26.1.4.1 develop a plan for the implementation of the improvement within 10 Working Days of the Council's Change Request for the approval of the Council; and

26.1.4.2 implement the improvement in accordance with the implementation plan approved by the Council.

## **27 CO-OPERATION FOR INVESTIGATION AND SECURITY**

- 27.1 The Contractor shall co-operate with any investigation relating to a breach of security which is carried out by or on behalf of the Council and:
- 27.1.1 shall use its reasonable endeavours to make its employees (and other Contractor Related Parties) identified by the Council available to be interviewed by the Council for the purposes of the investigation; and
  - 27.1.2 shall, subject to any legal restriction on their disclosure, provide all copies of documents, records or other material of any kind which may reasonably be required by the Council for the purposes of the investigation. The Council shall have the right to retain copies of any such material for use in connection with the investigation.
- 27.2 The Council shall, insofar as is practical, inform the Contractor of any specific or general security information which would reasonably be expected to affect the security of the Contractor or any Contractor Related Party or their property.
- 27.3 The Contractor shall comply with the Council's reasonable reporting requirements relating to infectious and notifiable diseases to the extent made known to the Contractor.

## **28 CONTRACTOR'S RECORDS**

### **28.1 Records and Open Book Accounting**

The Contractor shall (and shall procure that each Sub-Contractor shall):

- 28.1.1 at all times maintain a full record of particulars of the income from and costs of performing the Services;
- 28.1.2 upon request by the Council, provide a written summary of any of the costs and income referred to in Clause 28.1.1, 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
- 28.1.3 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.

### **28.2 Books of Account**

Compliance with Clause 28.1 (Records and Open Book Accounting) shall require the Contractor to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to this Contract, showing in detail:

- 28.2.1 administrative overheads;
- 28.2.2 payments made to Sub-Contractors;
- 28.2.3 capital and revenue, income and expenditure; and

28.2.4 such other items as the Council may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure or income received, for the purpose of this Contract.

And the Contractor shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in Sub-clauses 28.2.1 to 28.2.4 inclusive, available for inspection by the Council (and its advisers) upon reasonable notice, and shall promptly present a written report of these to the Council as and when requested from time to time.

### 28.3 Maintenance of Records

28.3.1 The Contractor shall maintain or procure that detailed records relating to the delivery of the Services, in each case in accordance with Good Industry Practice, the requirements of Clause 24 (Quality Assurance and Complaints) and any applicable Legislation.

28.3.2 Without prejudice to Clause 28.3.1, the Contractor shall procure that the following are maintained:

28.3.2.1.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and

28.3.2.1.2 full records of all maintenance procedures carried out during the term of this Contract,

and the Contractor shall have the items referred to in Clauses 28.3.2.1.1 and 28.3.2.1.2 available for inspection by the Council (and its advisers) upon reasonable notice, and shall present a report of them to the Council as and when requested from time to time.

### 28.4 Auditor

The Contractor shall permit all records referred to in this Clause 28 (Contractor's Records) to be examined and copied from time to time by the Council's auditor and their representatives and other representatives of the Council who reasonably require access to the same.

### 28.5 Retention

The records referred to in this Clause 28 (Contractor's Records) shall be retained for a period of at least five (5) years after the Contractor's obligations under this Contract have come to an end.

### 28.6 Termination or Expiry

Upon termination or expiry of this Contract, and in the event that the Council wishes to enter into another agreement for the operation and management of services the same as or similar to the Services, 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 Services and income received as a result of the Services.

### 28.7 Confidentiality

All information referred to in this Clause 28 (Contractor's Records) is subject to the obligations set out in Clause 42 (Freedom of Information and Confidentiality).

## **PART 5 – PAYMENT**

### **29 PAYMENT PROVISIONS**

#### **29.1 Core Services - Annual Sum**

The Council shall pay the Contractor the Annual Sum. The Annual Sum shall be payable in 12 equal instalments accruing daily and payable monthly by BACS in arrears. The Annual Sum shall (subject only to any adjustment, variation or deduction in accordance with the provisions of the Contract), be exhaustive of any amounts as are payable by the Council to the Contractor.

#### **29.2 Additional Services – Unit Rates**

If the Council instructs the Contractor to carry out Additional Services from time to time the Council shall pay for the Additional Services at the applicable Unit Rates for the Service. The Unit Rates shall (subject only to any adjustment, variation or deduction in accordance with the provisions of the Contract), be exhaustive of any amounts as are payable by the Council to the Contractor in respect of the Additional Services.

#### **29.3 Invoice**

29.3.1 Within ten (10) Working Days of the end of each Payment Period from the Service Commencement Date the Contractor shall submit an invoice to the Council stating at least the following information: -

29.3.1.1 the gross instalment of the Annual Sum;

29.3.1.2 any amounts in respect of Additional Services carried out in that Payment Period calculated in accordance with the Unit Rates applicable together with applicable unique purchase order numbers;

29.3.1.3 any adjustments which shall be made in accordance with this Contract including any Performance Deductions deductible under clause 32;

29.3.1.4 any amounts owed by one Party to the other in accordance with the Contract;

29.3.1.5 a supporting statement setting out details of the Additional Services carried out; and

29.3.1.6 a summary and reconciliation setting out the net effect of the foregoing.

29.3.2 The invoice submitted in accordance with Clause 30.3.1 shall state any VAT properly due thereon and be fully supported by background information or documentation.

#### **29.4 Payment of invoices**

Provided that the Council is satisfied acting properly and reasonably that the invoice submitted in accordance with Clause 29.3.1 is accurate and complete, the Council shall pay the sum set out in the invoice within 30 Working Days.

#### **29.5 Disputed Amounts**

In the event that the Council is not satisfied that a sum or sums in the invoice submitted in accordance with Clause 29.3.1 is accurate or complete, the Council shall:

29.5.1 pay any undisputed amount within 30 Working Days; and

29.5.2 withhold any disputed amount and submit a notice to the Contractor within 15 Working Days stating the sum which is in dispute and the reason for the dispute (a "Disputed Amount Notice").

**29.6 Response to Council's Notice**

Within 15 Working Days of the Contractor having received the Disputed Amount Notice, the Contractor shall respond setting out how the disputed amount was calculated

**29.7 Dispute**

The Parties shall meet as soon as reasonably practicable after the receipt of the Contractor's response to a Disputed Amount Notice and shall attempt to resolve the dispute amicably between them. If the Parties are unable to reach agreement the Council shall be entitled to continue withholding the disputed amount and the matter shall be referred to the Dispute Resolution Procedure.

**29.8 Determination of Dispute**

29.8.1 In the event that the outcome of the Dispute Resolution Procedure, Expert determination or an agreement between the Parties or decision of the courts is that:

29.8.1.1 the Contractor was properly due any part of the withheld sum, the Council shall pay such part within seven (7) Working Days together with interest thereon at the Prescribed Rate from the date on which such payment was due.

29.8.1.2 the Council is not due to pay the Contractor (and the Contractor is not due to receive) any part of the withheld sum, such part shall be deemed deducted from the Annual Sum and the Contractor shall, for the record, re-submit the invoice in the correct amount or issue a credit note.

**29.9 Sub-Contractors**

29.9.1 Where the Contractor enters into a Sub-Contract, the Contractor, shall include in that Sub-Contract:

29.9.1.1 Provisions having the same effect as those set out in Clause 30.1 to 30.8;

29.9.1.2 A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Clause 29.1 to 29.8.

For the purposes of this Clause 29.9 a "Sub-Contract" means any contract between two or more suppliers at any stage of remoteness from the Council in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Services under this Contract.

**29.10 Indexation**

The Annual Sum, the Unit Rates and the Performance Deductions will be revised on an annual basis as follows:

29.10.1 The Annual Sum, each Unit Rate and each Performance Deduction shall be adjusted in accordance with the provisions of this Clause 29.10 to reflect the effects of inflation.

29.10.2 The Annual Sum, each Unit Rate and each Performance Deduction shall be revised on an annual basis with effect from each anniversary of the Service Commencement Date in line with the percentage increase or decrease in the Consumer Prices Index as issued by the Office of National Statistics or anybody upon which such duties in connection with the compilation and maintenance of such index may have devolved ("CPI").

29.10.3 On each anniversary of the Service Commencement Date the Annual Sum, each Unit Rate and each Performance Deduction (subject to clause 29.11 below) shall be adjusted by the percentage increase or decrease in the February figure for CPI as the same becomes available in March calculated

29.10.3.1 For the First Contract Year: from the February before Service Commencement Date to February 2020;

29.10.3.2 From Second Contract Year onwards: from the February in the previous Contract Year to February in the current Contract Year

29.10.4 If the bases of computation of CPI change, any official reconciliation between the two bases of computation published by the body charged with the compilation and maintenance of the CPI (currently the Central Statistical Office) shall be binding upon the Council and the Service Provider and shall be applied in adjusting the application of the CPI thereto provided that in the absence of such official reconciliation such adjustments shall be made to the figures of the CPI as to make it correspond as nearly as possible to the previous method of computation and such adjusted figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published) and in the event of a dispute regarding such adjustments such dispute may be referred by either Party to the Dispute Resolution Procedure.

29.11 For the avoidance of doubt, if the Council decides in its absolute discretion to extend the Contract Period in accordance with Clause 3.2, the provisions set out in Clause 29.10 above shall continue to apply throughout the extension period.

### **30 VAT**

30.1 Unless the context otherwise requires, all sums payable or other consideration to be provided pursuant to this Contract are stated to be exclusive of any VAT payable (including for the avoidance of doubt any VAT payable as a consequence of any election to the Value Added Taxes Act 1994 or any similar statute or provision to waive the exemption applicable to the Depot) and when any such sums shall become payable or other consideration shall be provided or due the payer shall pay in addition to such sums or consideration all the VAT so chargeable within five (5) Working Days of the date on which a valid VAT receipt is issued to it.

30.2 If as a result of any Party performing or observing any of its obligations under this Contract it provides or is deemed for VAT purposes to provide any goods or services in respect of which VAT is chargeable, the recipient of the goods or services shall within thirty (30) Working Days of the date on which a valid VAT invoice is issued to it from the recipient of the goods and services, pay all the VAT so payable.

## **PART 6 – DEFAULTS, INDEMNITIES AND INSURANCE**

### **31 DEFAULTS AND REMEDIES AVAILABLE TO THE COUNCIL**

#### **31.1 Performance Management System**

31.1.1 The provision of the Performance Management System shall apply to this Contract.

31.1.2 The Council shall be entitled to deduct Performance Deductions in respect of Performance Defaults in accordance with the provisions of the Performance Management System.

#### **31.2 Other Remedies**

31.2.1 In addition to the matters set out above, in the event the Contractor commits a Performance Default the Council shall be entitled, without prejudice to any of its rights or remedies whether in contract, tort or under statute, to take all or any of the following measures: -

31.2.1.1 Withhold any further payments or instalments of the Annual Sum until the Contractor has remedied, made good or mitigated a Performance Default as stated in a Deduction Notice, Continuous Improvement Remedy Notice or Default Notice;

31.2.1.2 Remedy the Performance Default itself or engage others to do so and abate the Annual Sum by the reasonable cost of so doing this may include without limitation carrying out repairs and maintenance which are essential and charging the Contractor its costs for doing so.

31.2.2 Require the Contractor to:

31.2.2.1 identify and remove from the provision of the Services the member or members of staff who caused the Performance Default; and/or

31.2.2.2 Carry out training of staff and inviting the Council to attend and assist in such training;

31.2.2.3 appoint a new Contract Manager; and/or

31.2.2.4 replace or appoint a new Sub-Contractor; and/or

31.2.2.5 provide additional resources.

31.2.3 The provisions of this Clause are without prejudice to any other right or remedy of the Council.

#### **31.3 Excusing Causes**

31.3.1 The Contractor shall not be liable to the Council for a Performance Default to the extent that it is caused by an Excusing Cause provided that the Contractor has notified the Council in writing as soon as it has come to the Contractor's attention that an Excusing Cause has occurred or will occur.

### **32 DEFAULTS AND REMEDIES AVAILABLE TO THE CONTRACTOR**

#### **32.1 Interest**

In the event that any undisputed amount correctly rendered by invoice by the Contractor remains unpaid by the Council after 30 (thirty) days the Contractor shall notify the Council in writing giving the Council 5 (five) further Working Days to pay such an invoice. If the amount remains unpaid, the Contractor shall be entitled to charge interest from the date on which the 5-day period expired at the Prescribed Rate.

### **33 TERMINATION**

#### **33.1 Termination for convenience by the Council**

33.1.1 The Council shall be entitled to terminate this Contract in whole or in part at any point after five (5) calendar years from the Service Commencement Date by giving to the Contractor not less than six (6) months' notice in writing.

33.1.2 In the event that the Council terminates this Contract pursuant to clause 33.1.1 (Termination for convenience by Council), clause 35.6.2 shall apply.

#### **33.2 Termination on Contractor Default**

33.2.1 If any one or more of the matters in Clause 33.2.2 ("Contractor Default") occurs the Council shall be entitled to forthwith terminate the Contract in whole or in part by issuing a written notice to the Contractor to that effect in accordance with Clause 5. For the avoidance of doubt the occurrence of any one of the matters listed in Clause 33.2.2 shall be deemed repudiatory breach of contract by the Contractor. The right of the Council to terminate shall be a contractual right pursuant to this clause and/or a common law right accepting the Contractor's repudiatory breach as the circumstances dictate.

33.2.2 The matters referred to in Clause 33.1 above are:-

33.2.2.1 the Contractor or any of its employees (whether with or without the Contractor's knowledge) shall have committed a Prohibited Act in connection with the provision of the Services or in relation to this Contract and the matter has not been satisfactorily resolved by the Contractor by taking appropriate disciplinary action; or

33.2.2.2 the Contractor commits an act of fraud or bankruptcy; or

33.2.2.3 the Contractor misuses or infringes any of the Council's property rights or Council IT System or uses the same other than in the provision of the Services; or

33.2.2.4 the Contractor suffers an event of incapacity rendering the Contractor unable or potentially unable to carry out its obligations under the Contract and/or to meet any liability which may arise through the Contractor's negligence or breach of contract. (An event of incapacity shall include the appointment of a liquidator, insolvency within the meaning of the relevant Legislation, having substantial distress attachment execution or other legal process levelled, enforced, sued or threatened upon any of its property, the appointment of an administrator or receiver, the suspension of any publicly offered equities or the freezing of substantial assets); or

- 33.2.2.5 the combined value of the Performance Failure Points allocated to Performance Failures is greater than 3000 points in any consecutive three (3) month period or 6000 points in any consecutive six-month period;
- 33.2.2.6 the service of three (3) Default Notices within any consecutive three (3) month period;
- 33.2.2.7 if this 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 Regulations 2015 that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU;
- 33.2.2.8 the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure;
- 33.2.2.9 the Contractor commits a breach of any of its obligations under this Contract which materially and adversely affects the performance of the Services; and/or
- 33.2.2.10 the Contractor brings the Council into disrepute.

### 33.3 **Procurement Challenge**

- 33.3.1 In the event that this Contract or any modification of the same is subject to a bona fide and substantive legal or procurement challenge of any nature and/or is deemed by a regulatory Council to be ineffective or to be in breach of any law or regulation (the "Procurement Challenge"), then the parties shall co-operate in good faith to determine the best way to mitigate the impact of the Procurement Challenge, which may include varying some or all of the Agreement and/or terminating the Contract in whole or in part.
- 33.3.2 Upon the making of a declaration of ineffectiveness the Agreement shall be terminated and on reasonable notice the Council shall, without prejudice to any other right or remedy that it may have, pay to the Contractor all sums lawfully due to the Contractor in consideration of its proper performance of the Services up until the date and time of the declaration of ineffectiveness. The Council shall pay such sums within 30 days of the receipt by it of a correct invoice for the same from the Contractor.
- 33.3.3 Save as set out in Clause 33.3.2, the Council shall have no further liability to the Contractor, including without limitation, in relation to any loss of profit of the Contractor.
- 33.3.4 For the purposes of Regulation 101(5) of the Public Contracts Regulations 2015, the parties have agreed the inclusion of Clause 33.3 in order to regulate their mutual rights and obligations in the event of a procurement challenge and/or declaration of ineffectiveness being made. The parties also agree that the operation of those clauses shall provide the Contractor with sufficient restitution and compensation.

### 33.4 **Part Termination**

33.4.1 If the Contract is determined in part, the Annual Sum shall be adjusted to reflect fairly the Services which remain and if the parties are unable to agree such adjustment, the matter shall be referred to the Dispute Resolution Procedure. For the avoidance of doubt the Contractor shall not be entitled to recover through the adjusted Annual Sum any profit that, but for the Termination, would have accrued to the Contractor in respect of the terminated Services.

### 33.5 **Termination Notice**

33.5.1 The Termination Notice issued pursuant to this clause 33 shall:

33.5.1.1 set out the matter or matters giving rise to such Termination Notice, giving reasonable details;

33.5.1.2 state on its face that it is a Termination Notice;

33.5.1.3 state the date on which the termination is to take effect;

33.5.1.4 if the termination is in relation to part of the Contract; the part of the Services to be determined; and

33.5.1.5 be signed by the Council's Head of Governance and Legal.

### 33.6 **Suspension**

33.6.1 The Council, in its discretion but acting reasonably and taking into account the representations of the Contractor, shall be entitled to suspend part of the Services which it would otherwise be entitled to terminate pursuant to this Clause until such time as the Contractor is able to demonstrate that it is able to perform the Services to the Service Standard without default. During the period of such suspension (which shall be notified in writing by the Council) the Council shall be entitled to abate the Annual Sum Price by such amount as is necessary for the Council to perform the Services itself or to engage a third party to do so.

33.7 The rights of the Council under this clause are in addition and without prejudice to any right that either Party may have against the other for prior breach and to any right the Council may have against the Contractor for the breach, default, negligence or event leading to the Termination Date.

## 34 **FORCE MAJEURE**

34.1 The Parties shall not be liable for any loss of any kind whatsoever whether directly or indirectly caused by reason of any failure or delay in the performance of its obligations hereunder which is due to a Force Majeure Event, and for the avoidance of doubt, failure by either Party to comply with its contractual obligations by reason of a Force Majeure Event shall not constitute a breach of contract.

34.2 On becoming aware of circumstances of a Force Majeure Event which give rise to or which are likely to give rise to any such failure or delay on its part, the Party affected by it ("the Affected Party") shall forthwith notify the other Party by the most expeditious method then available and such notice shall specify the period which it is estimated that such failure or delay shall continue.

- 34.3 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 effect of the Force Majeure Event and facilitate the continued performance of the Contract.
- 34.4 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 reasonable steps to overcome or minimise the consequences of the Force Majeure Event.
- 34.5 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.
- 34.6 It is expressly agreed that any failure by the Affected Party to perform or any delay by the Affected Party in performing its obligations under this Contract which results from any failure or delay in the performance of its obligations by any Sub-Contractor or person, firm or company with which the Affected Party shall have entered into any such contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to a Force Majeure Event only in the event that that Sub-Contractor, person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of a Force Majeure Event.
- 34.7 If on the expiry of six (6) months after the occurrence of a Force Majeure Event where the Force Majeure Event is continuing and continues to have a material adverse effect on the Affected Party's performance of its obligations under the Contract, then either Party may terminate this Contract in its entirety.

## **35 CONSEQUENCES OF TERMINATION**

- 35.1 On the Expiry Date or earlier termination pursuant to the Contract the following provisions shall apply: -
- 35.1.1 subject to Clauses 21 (TUPE), 29 (Payment Provisions), 28 (Contractor's Records), 7 (Audit Access), 35(Consequences of Termination), 36 (Transition to Another Contractor), 37 (Indemnities Guarantees and Contractual Claims), 44 (Dispute Resolution), 42 (Freedom of Information and Confidentiality) and 54 (Data Protection) the Contract shall determine and cease to have effect and the Parties shall (save as aforesaid) be released from any further liability under this Contract; and
- 35.1.2 the Contractor shall at the Council's request assign to the Council (or to any person that the Council may direct) the benefit rights and interest in any Sub-Contracts, such assignment providing that the burden under the Sub-Contracts be apportioned so that the Contractor remains liable for payment for work or services completed as of the date of the assignment;
- 35.1.3 the Contractor and all Sub-Contractors shall vacate the Depot and any Licensed Area immediately on the Expiry Date or on the date of termination;
- 35.1.4 the Contractor shall offer for sale to the Council at Net Book Value any Asset which is not Council Equipment;

- 35.1.5 the Contractor shall hand over to the Council in a form agreed with the Council all Contract Data and as applicable any Council's Data which the Contractor holds, books, records, manuals, logs, data or other information (including work force information) relating to the Services and which the Council reasonably requests;
- 35.1.6 the Council shall be entitled to withhold from any sums due to the Contractor or recover as a debt the costs, damages or expenses incurred by the Council in putting the Depot, the Licenced Areas and the Council's Equipment back into the condition they were in as at the Service Commencement Date; and
- 35.1.7 within six (6) months the Parties shall carry out an accountancy reconciliation setting out any sums owed by one Party to the other and the Parties shall settle such amounts within twenty-five (25) Working Days of the reconciliation being settled and agreed.
- 35.2 The termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination. The Clauses of this Contract which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 35.3 Notwithstanding any provision of this Contract, on service of a notice of termination, this Contract shall only terminate in accordance with the provisions of this Contract.
- 35.4 **Continued effect – no waiver**
- Notwithstanding any breach of this Contract by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this Contract as being in full force and effect and to enforce its rights under this Contract. The failure of either Party to exercise any right under this Contract, including any right to terminate this Contract and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.
- 35.5 **Continued Performance**
- Subject to any exercise by the Council of its rights to perform, or to procure a third party to perform, the obligations of the Contractor, the Parties shall continue to perform their obligations under this Contract, notwithstanding the giving of any notice of default or notice of termination, until the termination of the Contract becomes effective in accordance with the provisions of this Clause.
- 35.6 **Payments made on Termination**
- 35.6.1 Save for any payments made in accordance with Exit Management, the Council shall not make a payment to the Contractor:
- 35.6.1.1 on the expiry of the Contract Period; or
- 35.6.1.2 for termination for cause in accordance with clause 33.2.
- 35.6.2 The Council shall pay the Contractor the Termination Payment as calculated in accordance with Payments on Termination if this Contract is terminated by the Council pursuant to clause 33.1.1.
- 35.6.3 The Termination Payment shall be the Contractor's sole remedy for the Council's termination of this Contract in accordance with clause 33.1.1.

## **36 TRANSITION TO ANOTHER CONTRACTOR**

### **Duty to Co-operate**

- 36.1 During the final six (6) months of the Contract Period (where this expires by effluxion of time) or during the period of any notice of termination of this Contract or of any of the Services, and in either case for a period of three (3) months thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Services (or any of the Services) to any New Contractor, and for the purposes of this Clause 37 the meaning of the term “co-operate” shall include:
- 36.1.1 liaising with the Council and/or any New Contractor, and providing reasonable assistance and advice concerning the Services and their transfer to the Council or to such New Contractor;
  - 36.1.2 comply with the provisions of Exit Management;
  - 36.1.3 allowing any such New Contractor access (at reasonable times and on reasonable notice) to the Depot but not so as to interfere with or impede the provision of the Services; and
  - 36.1.4 providing upon written request to the Council and/or to any New Contractor all and any information concerning the Services which is required for the efficient transfer of responsibility for their performance.
- 36.2 Transfer of Responsibility
- 36.2.1 In so far as it is within the control of the Contractor, the Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a New Contractor or to the Council, as the case may be, and the Contractor shall take no action at any time during the Contract Period or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

## **37 INDEMNITIES, GUARANTEES AND CONTRACTUAL CLAIMS**

### **37.1 Contractor’s Indemnity**

- 37.1.1 The Contractor shall be liable for and shall fully and promptly indemnify the Council and any Council Related Party against all Losses whatsoever and howsoever arising, whether directly, indirectly or in relation to any third-party liabilities, out of or in connection with: -
- 37.1.1.1 the Contractor's failure to provide all or any part of the Services in accordance with the Service Standard or at all;
  - 37.1.1.2 any breach by the Contractor of any of the provisions of the Contract;
  - 37.1.1.3 the use or occupation by the Contractor of any of the Council's premises including the Depot and the Licenced Areas for which the Council has any legal responsibility;
  - 37.1.1.4 the use by the Contractor of any Council Equipment or Asset owned by the Council for which the Council has any legal responsibility;

- 37.1.1.5 any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Contractor.
    - 37.1.2 For the purposes of Clause 37.1.1 above, references to the Contractor shall include any Contractor Related Party and for the purposes of Clause 37.1 “third party liabilities” shall mean any demands made by third parties including without limitation Residents against the Council and all liabilities of the Council to third parties.
  - 37.2 Council’s Indemnity
    - 37.2.1 The Council shall be liable for and shall fully and promptly indemnify the Contractor against all Losses whatsoever and howsoever arising whether directly, indirectly or in relation to any third-party liabilities out of or in connection with: -
      - 37.2.1.1 any breach of contract of the Council.
      - 37.2.1.2 the use or occupation by the Council of any property or premises belonging to the Contractor.
    - 37.2.2 The Council shall not be liable under Clause 37.2.1 for any consequential or indirect loss.
  - 37.3 Limitation of Indemnity
    - 37.3.1 Without prejudice to the generality of this Clause 37 the parties' liability to the other in respect of loss or damage to any property of any nature whatsoever shall include an obligation to reimburse all costs and expenses reasonably incurred by the other in the re-instatement or replacement of any such property, whether or not such re-instatement or replacement results in an improvement of or to the property so lost or damaged.
    - 37.3.2 The Contractor's liability to the Council pursuant to Clause 37.1 and the Council's liability to the Contractor pursuant to Clause 31 shall be, for the avoidance of doubt, without prejudice to any other right or remedy available to the Parties whether under the common law principles of contract, equity or tort, under statute or as expressly provided in this Contract and in particular (but without limitation) shall not prejudice in any way the Council's right to enforce at any time and in any manner whatsoever any Bond, Parent Company Guarantee or sub-contractor warranty.
    - 37.3.3 In any event or notwithstanding anything contained in this Contract, the Contractor's liability in contract, tort (including negligence or statutory duty) or otherwise arising by reason of or in connection with this contract (except in relation to death or personal injury caused by negligence) shall be limited in aggregate per year to: -
      - 37.3.3.1 where under the terms of Clause 37 the Contractor is obliged to hold insurance in respect of the matter from which the liability arises, the insurance levels set out in Clause 38;
      - 37.3.3.2 in respect of matters for which the Contractor is not obliged to hold insurance under the provisions of Clause 38 £5 million.
    - 37.3.4 In any event or notwithstanding anything contained in this Contract, the Council's liability in contract, tort (including negligence or statutory duty) or otherwise arising

by reason of or in connection with this Contract (except in relation to death or personal injury caused by negligence) shall be limited in aggregate per year to £1 million.

37.3.5 For the purposes of Clauses 37.3.3 and 37.3.4 “in aggregate per year” shall mean that the limitation of liability referred to in those Clauses shall be the monetary limit of liability in respect of breaches, failures or negligence committed in any Contract Year.

#### 37.4 Notification of Claims

Where either Party (the “Indemnified Party”) wishes to make a claim under this Contract against the other (the “Indemnifying Party”) in relation to a claim made against it by a third party (a “Third Party Claim”), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

#### 37.5 Conduct of Claims

Subject to the rights of the insurers under the Required Insurances, the Indemnifying Party may at its own expense and with the assistance and co-operation of the Indemnified Party have conduct of the Third Party Claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the Third Party Claim within a reasonable period, take any action to settle or prosecute the Third Party Claim.

#### 37.6 Costs of Claims

The Indemnifying Party shall, if it wishes to have conduct of any Third-Party Claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the Third-Party Claim by the Indemnifying Party.

#### 37.7 Parties Not Responsible to indemnify

Any requirement in this Clause 37 or elsewhere in these Clauses for one party to indemnify the other shall not apply to the extent that the claim in question arises from the negligence or breach of contract of the indemnified Party.

#### 37.8 Mitigation

The Parties shall have a general duty to mitigate losses, damages, costs and expenses arising from the other Party’s breach of contract, breach of Lease terms or tort.

#### 37.9 Conduct of indemnity claims

Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Conduct of Claims in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

### **38 INSURANCE**

#### 38.1 Requirement to Maintain

Without prejudice to the Council's rights under the Contract, the Contractor shall, during the Contract Period, take out with reputable insurers and maintain or procure the maintenance of such policies of insurance as may be necessary to insure the Contractor against all manner of risks which might arise in connection with the Contractor's performance of its obligations under the Contract (except in relation to the risks to be insured by insurance maintained by the Council in accordance with Clause 38.2) including (without limitation) in respect of the following risks:-

- 38.1.1 employers' liability including (without limitation) personal injury or death of any person arising under a contract of service with the Contractor and/or arising out of an incident occurring during the course of such person's employment in compliance with the Employer's Liability (Compulsory Insurance) Act 1969; such insurance cover shall be not less than £10,000,000 (ten million pounds) in respect of any one incident;
- 38.1.2 public liability and occupiers' liability; such insurance cover shall be not less than £10,000,000 (ten million pounds) in respect of any one incident;
- 38.1.3 damage to the Depot or the Licenced Areas caused by the Contractor's act, omission, default or negligence;
- 38.1.4 such other risks as may from time to time be reasonably required by the Council;

and such insurance cover above shall include an indemnity to principal condition. The Contractor shall ensure that the Council's interest at all times during the Contract Period is and remains noted on the insurances.

### 38.2 Building Insurance

- 38.2.1 The Council shall take out and maintain insurance, and/or self-insure, as applicable, providing for the restoration and rebuilding of the Depot or any of them in the event of damage by fire, aircraft, explosion, lighting, riot, civil commotion, earthquake, storm and flood, escape of water, impact, sprinkler leakage and/or subsidence caused otherwise than by the Contractor's acts or omissions and accidental damage provided the Contractor has not acted negligently insofar as such insurance can be obtained on reasonable commercial terms (the "Council Insurances"). The Council shall notify the Contractor of the type of insurance that has been obtained, including relevant deductibles and premia. The Council shall apply any insurance proceeds paid in relation to insured risks relating to the Depot to the repair or reinstatement of Depot.
- 38.2.2 In relation to the Council Insurances, the Contractor shall comply with all requirements of the insurers including any requirements of the fire authority as to fire precautions relating to the Depot and give notice to the Council of any requirements and recommendations of the fire authority as to fire precautions relating to the Depot.
- 38.2.3 Upon the discovery of any damage to the Depot ("Building Damage"):
  - 38.2.3.1 the Contractor shall (if the Contractor discovers the damage) or the Council shall (if the Council discovers the damage) record any relevant details of the damage (including photographs if necessary);
  - 38.2.3.2 the Contractor shall notify the Authorised Officer or suitable deputy or person of suitable authority within the Council as soon as reasonably practicable after it becomes aware of the damage.
  - 38.2.3.3 the Contractor shall as soon as is reasonably practicable make safe the Building Damage.

### 38.3 Obligation on Parties

No Party to this Contract shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle

any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co-insured or an additional insured person.

38.4 Evidence of Policies

The Contractor shall provide, to the Council:

38.4.1 copies on request of all insurance certificates evidencing the insurance policies referred to in Clauses 38.1 (together with any other information reasonably requested by the Council relating to such insurance policies) and the Council shall be entitled to inspect them during ordinary business hours; and

38.4.2 evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this Clause 8 (Insurance).

38.5 Renewal Certificates

Renewal certificates in relation to any of the insurances required by Clauses 38.1 and 38.3 shall be obtained as and when necessary and copies (certified in a manner acceptable to the Council) shall be forwarded to the Council as soon as possible but in any event on or before the renewal date.

38.6 Breach

If the Contractor is in breach of Clause 38.1, either fully or at all, the Council shall be entitled to:-

38.6.1 provide the insurance itself in place of the Contractor; and

38.6.2 to charge the cost of such substitute insurance together with an administration charge of 10% (ten per cent) of such cost, to the Contractor by way of (in the Council's discretion) either: -

38.6.2.1 deduction from any sums payable by the Council to the Contractor under the terms of the Contract; or

38.6.2.2 recover the same as a debt due to the Council from the Contractor.

38.7 Notification of Claims

38.7.1 The Contractor shall:

38.7.1.1 give the Council notification within ten (10) Working Days after any claim on any of the Required Insurances or which, but for the application of the applicable insurance policy excess, would be made on any of the Required Insurances and (if required by the Council) give full details of the incident giving rise to the claim.

38.7.1.2 Promptly and diligently deal with all claims received relating to the Required Insurances and in accordance with insurers requirements; and

38.7.1.3 In relation to all claims relating to the Required Insurances, give the Council details of the value and nature of all such claims under this Contract as may from time to time be required by the Council provided always that such information shall be supplied by the Contractor no less frequently than once every twelve months.

38.8 Limit of Liability

Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its other liabilities and obligations under this Contract.

38.9 Premiums

Save where expressly set out in this Contract, the insurance premiums for the Required Insurances and the amount of any loss that would otherwise be recoverable under any of the Required Insurances but for the applicable uninsured deductible and limit of indemnity in respect of such insurance shall at all times be the responsibility of the Contractor.

38.10 Council Approval

The Required Insurances shall be affected with insurers approved by the Council, such approval not to be unreasonably withheld or delayed.

## **PART 7 – CHANGES**

### **39 CHANGE IN LAW**

- 39.1 The Contractor shall comply with all and any Legislation, amended Legislation or re-enacted Legislation which comes into force at any time during the Contract Period and shall ensure that the Services are provided in accordance with the same.
- 39.2 If at any time during the Contract Period either Party becomes aware of a Qualifying Change of Law which in its reasonable opinion will result in: -
- 39.2.1 a necessary change in the Services;
  - 39.2.2 a variation or amendment to the terms of this Contract; and/or
  - 39.2.3 an amendment, revision, modification of the Depot or any part of the Depot
- that Party shall issue a notice in writing to the other giving full details of the Qualifying Change of Law and the resulting effect.
- 39.3 As soon as practicable after receipt of any notice from either Party under Clause 42.2 above, the Parties shall discuss and agree the issues referred to in the notice and shall agree the way in which the Qualifying Change in Law should be effected and the steps which may be reasonably taken by the Contractor to mitigate the effect of the Qualifying Change in Law.
- 39.4 Following agreement between the Parties as to the way in which the Qualifying Change in Law is to be affected:
- 39.4.1 the Contractor shall bear the costs of effecting any General Changes in Law and there shall be no changes to the Annual Sum as a result; and
  - 39.4.2 any Specific Changes of Law shall be put into effect as provided in Clause 40 as if the Council had issued a Council Notice of Change and any changes to the Annual Sum (or, if applicable and agreed by the Council, a capital payment) shall be reasonably agreed between the Parties.
- 39.5 Both Parties shall consult with each other to agree the resultant changes required to the Specification or other Contract Documents to govern the performance of the Change in Law.

#### **United Kingdom Withdrawal from the European Union**

- 39.6 The Parties acknowledge and agree that:
- 39.6.1 the outcome of the referendum held under the European Referendum Act 2015 renders it likely that the United Kingdom will leave the European Union within the Contract Period;
  - 39.6.2 it is foreseeable that much Legislation currently derived from the United Kingdom's membership of the European Union will be by some means translated into the law of the relevant parts of the United Kingdom independently from the law of the European Union;
  - 39.6.3 no EU Status Change shall constitute a Qualifying Change in Law, and
  - 39.6.4 for the avoidance of doubt, a Change in Law that is an EU Status Change (for the purposes of this sub clause only, the "relevant EU Status Change") may subsequently

become a Qualifying Change in Law if subsequent Changes in Law render limb (a) of the definition of EU Status Change no longer applicable to the relevant EU Status Change, such change including (inter alia) case law within limb (c) of the definition of Change in Law which give a different interpretation to any Legislation than that previously given by the Court of Justice of the European Union.

**40 COUNCIL AND CONTRACTOR CHANGES**

40.1 The provisions of the Change Control Mechanism shall apply to this Contract.

## Part 8 - GENERAL

### 41 COUNCIL STEP-IN

#### 41.1 Right to Step-In

If the Council reasonably believes that it needs to take action in connection with the Services:

- 41.1.1 because a serious risk exists to the health or safety of persons or property or to the environment;
- 41.1.2 to discharge a statutory duty; and/or
- 41.1.3 as may be required by the outcome of a statutory inspection;
- 41.1.4 because an Emergency has arisen;

then the Council shall be entitled to take action in accordance with Clauses 41.2 (Notice to the Contractor) to 41.5 (Step-In on Contractor Breach).

#### 41.2 Notice to the Contractor

If Clause 41.1 (Right to Step-In) applies and the Council wishes to take action, the Council shall notify the Contractor in writing of the following:

- 41.2.1 the action it wishes to take;
- 41.2.2 the reason for such action;
- 41.2.3 the date it wishes to commence such action;
- 41.2.4 the time period which it believes will be necessary for such action; and
- 41.2.5 to the extent practicable, the effect on the Contractor and its obligation to carry out the Services during the period such action is being taken.

#### 41.3 Action by Council

Following service of such notice, the Council shall take such action as notified under Clause 41.2 (Notice to the Contractor) and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and in so far as it is within the control of the Contractor, the Contractor shall give all reasonable assistance to the Council while it is taking the Required Action. The Council shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

#### 41.4 Step-In without Contractor Breach

If the Contractor is not in breach of its obligations 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 Services the Contractor shall be relieved from its obligations to carry out and provide such part of the Services.

#### 41.5 Step-In on Contractor Breach

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 Services

- 41.5.1 the Contractor shall be relieved of its obligations to carry out such part of the Services; and
- 41.5.2 in respect of the period in which the Council is taking the Required Action, the Annual Sum due from the Council to the Contractor shall equal the amount the Contractor would receive if the Contractor were satisfying all its obligations and providing the Services 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.

## **42 FREEDOM OF INFORMATION AND CONFIDENTIALITY**

### **42.1 Duty of Confidentiality**

- 42.1.1 The Parties agree that the terms of this Contract shall, subject to Clause 42.1.2 below, not be treated as Confidential Information and may be disclosed without restriction.
- 42.1.2 Clause 42.1.1 above shall not apply to terms of this Contract designated as Commercially Sensitive Information to this Contract, which shall, subject to Clause 42.2 below, be kept confidential for the relevant periods specified in that Part.
- 42.1.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract or the Services and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any Confidential Information.

### **42.2 Permitted Disclosure**

Clauses 42.1.2 and 42.1.3 (Duty of Confidentiality) shall not apply to:

- 42.2.1 any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Contract for the performance of those obligations;
- 42.2.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 42 (Freedom of Information and Confidentiality);
- 42.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor or any of its Sub-Contractors;
- 42.2.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory Council having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory Council concerned;
- 42.2.5 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- 42.2.6 any provision of information to the parties' own professional advisers or insurance;
- 42.2.7 any disclosure by the Council of information relating to the Services and such other information as may be reasonably required for the purpose of conducting a due

diligence exercise, to any proposed new contractor, its advisers and lenders should the Council decide to re-tender this Contract; or

- 42.2.8 any registration or recording of the property registration required;
- 42.2.9 any disclosure of information by the Council to any other department, office or agency of the Government or their respective advisors or to any person engaged in providing services to the Council for any purpose related to or ancillary to the Contract; and
- 42.2.10 any disclosure for the purpose of:
  - 42.2.10.1 the examination and certification of the Council's or the Contractor's accounts; or
  - 42.2.10.2 any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Council has used its resources; or
  - 42.2.10.3 complying with a proper request from either Party's insurance advisers or insurers on placing or renewing any insurance policies; or
  - 42.2.10.4 (without prejudice to the generality of Clause 42.2.4 above) compliance with the FOIA and/or the Environmental Information Regulations.

Provided that, for the avoidance of doubt, neither Clauses 42.2.10.4 nor 42.2.4 above shall permit disclosure of Confidential Information otherwise prohibited by 42.1.3 above where that information is exempt from disclosure under the section FOIA.

#### 42.3 Obligations Preserved

Where disclosure is permitted under Clause 42.2 (other than Clauses 42.2.2, 41.2.3, 42.2.5, 42.2.8 and 42.2.9) the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

#### 42.4 Audit

For the purposes of

- 42.4.1 the examination and certification of the Council's accounts;
- 42.4.2 the Audit Commission Act 1998 (and any other Legislation relating to the inspection, examination and auditing of the Council's accounts); and
- 42.4.3 an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness of which the Council has performed its functions,

the District Auditor and the Audit Commission may examine such documents as he or it 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 or it considers necessary.

#### 42.5 Exploitation of Information

The Contractor shall not make use of this Contract or any information issued or provided by or on behalf of the Council in connection with this Contract otherwise than for the purposes of this Contract, except with the written consent of the Council.

#### 42.6 Information about Council Related Parties

Where the Contractor, in carrying out its obligations under this Contract, is provided with information relating to Council Related Parties, 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 Council Related Party and has obtained the prior written consent of the Council.

42.7 Expiry

On or before the Expiry Date or the Termination Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to any Council Related Party including any documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Council.

42.8 Disclosure by Audit Commission

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

42.9 The provisions of this Clause 42 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

42.10 Freedom of Information

42.10.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Council's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 42.10.2 to 42.10.5 (inclusive) below.

42.10.2 Where the Council receives a Request for Information in relation to Information that the Contractor is holding on its behalf the Council shall transfer to the Contractor such Request for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information and the Contractor shall:

42.10.2.1 provide the Council with a copy of all such Information in the form that the Council requires as soon as practicable and in any event within five (5) Working Days (or such other period as the Council acting reasonably may specify) of the Council's request; and

42.10.2.2 provide all necessary assistance as reasonably requested by the Council in connection with any such Information, to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Regulations.

42.10.3 Following notification under Clause 42.10.2 and up until such time as the Contractor has provided the Council with all the Information specified in Clause 42.10.2.1, the Contractor may make representations to the Council as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Council shall be responsible for determining at its absolute discretion:-

42.10.3.1 whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;

- 42.10.3.2 whether the Information is to be disclosed in response to a Request for Information, and
- 42.10.3.3 in no event shall the Contractor respond directly, or allow its Sub-Contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Council.
- 42.10.4 The Contractor shall ensure that all Information held on behalf of the Council is retained for disclosure for at least 6 years (from the date it is acquired) and shall permit the Council to inspect such Information as requested from time to time.
- 42.10.5 The Contractor acknowledges that any lists provided by its listing or outlining Confidential Information, are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 42.10.4.
- 42.10.6 In the event of a request from the Council pursuant to Clause 42.10.2 above, the Contractor shall as soon as practicable, and in any event within five (5) Working Days of receipt of such request, inform the Council of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Council under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Council's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations the Council shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the ten (10) Working Days period for compliance shall be extended by such number of additional days for compliance as the Council is entitled to under Section 10 of the FOIA. In such case, the Council shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent the Council is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 42.10.7 The Contractor acknowledges that (notwithstanding the provisions of Clause 42) the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "FOIA Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Contract:-
- 42.10.7.1 in certain circumstances without consulting with the Contractor, or
- 42.10.7.2 following consultation with the Contractor and having taken their views into account.

Provided always that where Clause 42.10.7.1 applies, the Council shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

**43 NO DOUBLE RECOVERY**

Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or otherwise.

**44 DISPUTE RESOLUTION**

44.1 Disputes

Any dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this Clause 44.

44.2 Consultation

If a dispute arises in relation to any aspect of this Contract, the Contract Manager and the Authorised Officer shall at first instance use their reasonable endeavours to resolve it. If the dispute is not resolved between the Contract Manager and the Authorised Officer, the matter shall be referred to senior levels in both organisations and subsequently to Director and Chief Executive level if necessary.

44.3 Mediation

If the Parties fail to reach agreement the dispute shall be referred to non-binding mediation in accordance with the rules of the Chartered Institute of Arbitrators Cost Controlled Procedure for the mediation of disputes. The mediation shall be non-binding unless agreement is reached and a document signed with contractual effect. The mediation shall be conducted within six (6) weeks of a referral by either Party.

44.4 Expert

If the Contractor and the Council fail to resolve the dispute through such mediation, either Party may refer the matter to an Expert selected in accordance with Clauses 44.4.1 and 44.4.2 below. For the avoidance of doubt, nothing shall compel a Party to refer a matter to an Expert before proceeding to litigation.

44.4.1 The Parties shall jointly appoint as Expert a person suitably qualified to determine such matter or dispute.

44.4.2 If

44.4.2.1 the Council and the Contractor are unable to agree on the identity of the appointee, or

44.4.2.2 the appointee declines to act

the President for the time being of the Chartered Institute of Arbitrators shall appoint an Expert within twenty-five (25) Working Days of any application for such appointment by either Party.

44.5 Within five (5) Working Days of appointment in relation to a dispute, the Expert shall require the Parties to submit in writing their respective arguments. The Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

- 44.6 The Expert shall provide to both Parties his written decision on the dispute, within twenty-five (25) Working Days of appointment (or such other period as the Parties may agree with the Expert). The Expert shall state reasons for his/her decision.
- 44.7 The Expert's decision shall be binding on both Parties who shall forthwith give effect to the decision, unless and until either Party refers the dispute to a court, in which event, the court shall be entitled to open and review any decision of the Expert.
- 44.8 The Expert's costs of any reference shall be borne as the Expert 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.
- 44.9 The Expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which he reached his determination.
- 44.10 All information, data or documentation disclosed or delivered by a Party to the Expert in consequence of or in connection with his appointment as Expert shall be treated as confidential.
- 44.11 The Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions as Expert unless the act or omission is in bad faith. Any employee or agent of the Expert is similarly protected from liability.
- 44.12 Reference to the Courts
- If, following determination by the Expert in accordance with this clause or no referral in accordance in accordance with Clause 44.4 above, the dispute remains unresolved, either Party may refer the matter to the exclusive jurisdiction of the courts of England.

#### **45 ORDERING OF GOODS AND SERVICES**

Neither Party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

#### **46 ASSIGNMENT AND SUB-CONTRACTING**

##### **46.1 Restriction on the Council**

The Council shall be entitled to assign, novate or otherwise transfer or dispose of its rights under this Contract or any part thereof to any other body (including but not limited to any private sector body of suitable financial standing).

##### **46.2 Restriction on the Contractor**

46.2.1 The Contractor shall not assign, novate, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Council.

46.2.2 The Council may withhold or delay its consent where it considers that:

46.2.2.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests of the Council; and/or

- 46.2.2.2 the proposed Sub-Contractor is considered to be unreliable and/or has not provided reasonable services to either the Council or any of its other customers; and/or
  - 46.2.2.3 the proposed Sub-Contractor employs unfit persons; and/or
  - 46.2.2.4 the proposed Sub-Contractor poses security concerns to the Council; and/or
  - 46.2.2.5 the appointment of the proposed Sub-Contractor would amount to the award of a new contract for the purposes of the EU Treaty, Directive 2015/23 EC or the Public Contracts Regulations 2015; and/or
  - 46.2.2.6 the proposed assignment or novation would constitute the award of a new contract for the purposes of the EU Treaty, Directive 2015/23 EC or the Public Contracts Regulations 2015.
- 46.2.3 It is acknowledged that the Contractor proposes to appoint the Key Sub-Contractors listed in Notified Key Sub-contractors and the Council hereby grants its consent to the appointment of the Key Sub-Contractors. Prior to the Service Commencement Date, the Contractor will execute and shall ensure that the Key Sub-Contractors listed execute the collateral warranty as set out.
- 46.2.4 In the event that the Council gives consent to the appointment of a Sub-Contractor in accordance with this clause 46.2 and the Sub Contract is entered into exclusively for the purposes of delivery of the Services the Contractor shall notify the Council and the relevant Sub-Contract shall constitute a Third-Party Contract.
- 46.3 Contractor's Obligations
- The Contractor shall perform its obligations under and observe all the terms of any sub-contract with a Sub-Contractor.
- 46.4 Obligation to Inform
- The Contractor shall inform the Council as soon as reasonably practicable and, in any event, within 30 days of any Change of Control of the Contractor.
- 46.5 Change of Ownership
- 46.5.1 The Council may terminate this Contract immediately by written notice without penalty if there is a Change of Control of the Contractor to which the Council objects except where the Council:
- 46.5.1.1 Has given its prior written consent to the Change of Control which subsequently takes place as proposed; or
  - 46.5.1.2 Has not served its notice within six (6) months of the later of the date the Change of Control took place or the date on which the Council was given notice of the Change of Control.
- 46.5.2 The Contractor shall notify the Council in writing without one (1) months of any Change of Control taking place.

**47      AUDIT ACCESS**

The Contractor shall provide to the Authorised Officer all information, documents, records and the like in connection with the Services in the possession of, or available to, the Contractor (and to this end the Contractor shall use all reasonable endeavours to procure that all such items in the possession of the Contractor or any Sub-Contractor shall be available to it and the Contractor has included or shall include, relevant terms in all contracts with Sub-Contractors to this effect) as may be reasonably requested by the Authorised Officer for any purpose in connection with this Contract.

**48      NO AGENCY**

48.1      No Partnership or Employment

Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Council and the Contractor.

48.2      Power to Bind

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.

48.3      Deemed Knowledge

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 Services as is held (or ought reasonably to be held) by any Contractor Related Party.

**49      ENTIRE AGREEMENT**

49.1      Prior Representations etc Superseded

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.

49.2      Acknowledgements

Each of the Parties acknowledges that:

49.2.1      subject to Clause 4.1 (Contractor Warranties) it does not enter into this Contract on the basis of and does not rely, and has not 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 or 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 in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Contract; and

49.2.2      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.

**50 NOTICES**

50.1 Form and Service of Notices

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, or leaving the same at:

<b>Contractor</b>	<b>Council</b>
[INSERT NAME]	
[INSERT ADDRESS]	

50.2 Provision of Information to Representatives

Where any information or documentation is to be provided or submitted to the Authorised Officer or the Contract Manager it shall be provided or submitted by sending the same by first class post or by hand, or leaving the same at:

<b>Contract Manager</b>	<b>Authorised Officer</b>
[INSERT NAME]	
[INSERT ADDRESS]	

50.3 Change of Details

Either Party to this Contract (and either representative) may change its nominated address by prior notice to the other Party.

50.4 Notices by Post

Notices given by post shall be effective upon the earlier of actual receipt and five (5) Working Days after mailing. Notices delivered by hand shall be effective upon delivery.

**51 SEVERABILITY**

If any term, condition or provision of 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 and enforceability of the other provisions of or any other documents referred to in this Contract.

**52 WAIVER**

52.1 Waiver to be Written

No term or provision of this Contract shall be considered as waived by any Party unless a waiver is given in writing by that Party.

52.2 Extent of Waiver

No waiver under Clause 52.1 (Waiver to be Written) 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.

**53 ASSISTANCE WITH LEGAL AND/OR OMBUDSMAN PROCEEDINGS**

53.1 If requested to do so by the Authorised Officer, the Contractor shall provide to the Authorised Officer all relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council arising out of the provision of the Services or the Contractor's presence on any Council premises and the Contractor shall give evidence or assistance as required in any such inquiries, arbitrations, proceedings, hearings or tribunals.

53.2 Where the Contractor or any of its employees become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services or in any way connected with the Services, then the Contractor shall notify the Authorised Officer thereof immediately in writing. Such notification shall include all relevant information to enable the Authorised Officer to fully investigate the matter.

53.3 The Contractor shall fully co-operate with and provide assistance and all relevant information to the Council and the Commission for Local Administration in England ("the Ombudsman") in any inquiries or investigations carried out by or on behalf of the Ombudsman in matters of alleged maladministration or injustice or any other matter arising in connection with the provision of the Services under the Contract.

53.4 If, as a result of such inquiry or investigation, the Ombudsman makes a finding against the Council of maladministration or injustice or other finding and if the finding is found to be attributable wholly or in part to the actions or omissions of the Contractor then (without prejudice to any other rights or remedies available to the Council under the Contract or any other contract with the Contractor) the Council shall be entitled to recover from the Contractor (whether by deduction from any monies due to the Contractor or otherwise) such proportion of any award made against the Council to a complainant and related costs as are attributable to those actions or omissions including fees of the Contractor.

53.5 The Contractor shall take such action as the Authorised Officer may from time to time specify to remedy a finding of maladministration or to implement a local settlement.

53.6 In the event of a dispute as to the proportion of the award and costs payable by the Council and the Contractor pursuant to any finding of the Ombudsman as aforesaid then the parties shall seek to resolve such dispute pursuant to the provisions of Clause 44.

53.7 Any information provided or assistance rendered by the Contractor pursuant to the obligations in this Clause 53, in whatever form, shall be provided at no cost to the Council unless the complaint of maladministration or court proceedings under this clause 54 does not arise from an act or omission of the Contractor in which case it shall be entitled to reimbursement of reasonable costs in providing such assistance from the Council.

**54 DATA PROTECTION**

The provisions of Data Protection as Schedule X shall apply to this Contract.

**55 INTEREST ON LATE PAYMENT**

Save where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Council or from the Council to the Contractor under any provision of this Contract is not paid within thirty (30) Working Days of the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the Parties that the Prescribed Rate provides the Contractor with a substantial remedy pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

**56 RESTRICTION ON TRADE**

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

56.1.1 for a period of one year solicit the services of any employee of the Council or any employee to be transferred upon termination of this Contract;

56.1.2 use or disclose any information of a confidential or commercial nature acquired by it during the performance of the Services under this Contract; or

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

**57 GOVERNING LAW AND JURISDICTION**

The Contract shall be governed by and construed in all respects in the accordance with the laws of England and Wales. Subject to Clause 44 (Dispute Resolution), the English Courts shall have exclusive jurisdiction to settle any Contract.

**58 CAPACITY**

Save as otherwise expressly provided, the obligations of the Council under this Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Council to the Contractor.

**THIS CONTRACT** is executed as a deed and delivered on the date stated at the beginning of this Contract.

THE COMMON SEAL of )  
OF Central Swindon North was affixed to this DEED )  
BY ORDER: )

Director of Administration:

Seal Register No:

SIGNED as a deed by )  
[CONTRACTOR] )  
by [a Director and its Company Secretary]/ )  
or [two Directors] )

.....

Director

.....

Director/Company Secretary