



TERMS AND CONDITIONS

for

TREATMENT OF DRY MIXED RECYCLING (DMR)

between

RUTLAND COUNTY COUNCIL DISTRICT COUNCIL
of Catmose, Oakham, Rutland, LE15 6HP (“the Council”)

and

CONTRACTOR NAME

whose registered address is at

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(“the Contractor”)

Services Commencement Date: **XX.XX.XXXX**

Expiry Date: 31 March 2020

Dated 20**XX**

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SERVICES AGREEMENT

This Agreement is made the **XX** day of **XXXXXXXXXX** 20**XX**

BETWEEN:

- (1) **Rutland County Council District Council** of Catmose, Oakham, LE15 6HP (“the Council”); and
- (2) **[XXX]**, a [company limited by guarantee] [(Company No. **XXX**)] whose registered office is at **[XXX]** (“the Contractor”).

1 INTRODUCTION

- 1.1 The Contractor has agreed to provide the Services as set out or referred to in this Agreement, for the treatment of Dry Mixed Recycling (DMR).

2 HEADINGS, INTERPRETATION AND GENERIC DEFINITIONS

- 2.1 The contents for and headings within the Agreement are for convenience of reference only and will not affect its construction or interpretation.

- 2.2 Reference in this Agreement to:

- 2.2.1 any statute, statutory instrument, order, regulation or other similar instrument (legislation) shall be construed as a reference to the legislation as amended or re-enacted from time to time;

- 2.2.2 any person shall include their successors and assignees;

- 2.2.3 a public organisation 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;

- 2.2.4 (except where the context otherwise requires) words denoting the singular include the plural and vice-versa, words denoting any gender include all genders and words denoting persons include the Contractor, providers and corporations and vice-versa; and

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2.2.5 any clause, sub-clause or Specification schedule shall mean a clause or a sub-clause of or a Specification schedule to the Agreement.

2.3 In this Agreement the following generic definitions shall have the following meanings:

“Agreement”	means this contract document including the Terms and Conditions, the Specification and the Contractor’s Tender
“Authorised Officer”	the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Agreement, or as amended from time to time in accordance with clause 29 (Authorised Officer)
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England
“Change in Law”	the coming into effect or repeal (without re-enactment or consolidation) in England of any law, or any amendment or variation to any law, or any judgment of a relevant court of law which changes binding precedent in England, in each case after the date of this Agreement
“Confidential Information”	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all Personal Data and sensitive Personal Data (within the meaning of the DPA)
“Contractor”	the Contractor and where applicable this shall include the Contractor’s agents, Employees,

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	permitted assigns, representatives, Sub-contractors, and, if the Contractor is a consortium or consortium leader, the consortium members
“Contract Manager”	the person named by the Contractor as the contract manager and any replacement from time to time in accordance with clause 30 (Contract Manager)
“Contract Period”	means the period from the Services Commencement Date to the Expiry Date, unless subject to early termination
“Control”	control as defined by section 416 of the Income and Corporation Taxes Act 1988
“Council”	Rutland County Council as named above as a Party and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists)
“DPA”	The Data Protection Act 1998
“Emergency Preparedness and Response Plan”	a plan which sets out the procedures to be adopted by the Contractor in the event of an emergency situation that will prevent the Contractor delivering the Services and including the procedures to be taken by the Contractor in planning and providing for any such event
“Employee”	any person employed by the Contractor to deliver the Services, which will also include the

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	Contractor's agents, representatives, servants, Sub-contractors and unpaid and voluntary workers
“EIR”	The Environmental Information Regulations 2004
“Expiry Date”	31 March 2020
“FOIA”	The Freedom of Information Act 2000
“Force Majeure”	any cause materially affecting the performance of a Party of its obligations under this Agreement arising from any act beyond its reasonable control and affecting either Party, including without limitation: acts of god, war, industrial action (subject to clause 35.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies
“Good Industry Practice”	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Agreement
“Intellectual Property Rights”	patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
“Key Personnel”	those persons named by the Contractor as being key personnel and any replacement from time to time in accordance with clause 31 (Key

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	Personnel)
“Law”	any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply
“Materials”	any and all works of authorship and materials developed, written or prepared on whatever media for the purposes of or in connection with the Services including, without limitation, any and all reports, studies, data, databases, diagrams, charts, specifications, software, pre-contractual and contractual documents and all drafts thereof and working papers relating thereto
“Party”	either the Contractor or the Council
“Personal Data”	as defined in the DPA
“Price”	the price of the Services as set out in Specification schedule 4 (Payment Mechanism). Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for
“Prohibited Act”	the following constitute Prohibited Acts: <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform

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	<p>improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act;</p> <p>(ii) under legislation creating offences concerning fraudulent acts;</p> <p>(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or</p> <p>(iv) defrauding, attempting to defraud or conspiring to defraud the Council</p>
<p>“Replacement Contractor”</p>	<p>any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Agreement</p>
<p>“Services”</p>	<p>the services described in Specification schedule 2 (Service Requirements) to be supplied by the Contractor in accordance with the Agreement together with all equipment required and any associated goods provided by the Contractor in</p>

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	relation to those services
“Services Commencement Date”	XX.XX.XXXX
“Sub-contractor”	means any person engaged by or on behalf of the Contractor as may be permitted under this Agreement
“Tender”	the Contractor’s tender for the Services, submitted in response to the Council’s invitation to tender.
“Transparency Code”	Local Government Transparency Code 2015
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as may be amended or replaced from time to time
“Vetting Procedures”	the Council's procedures and departmental policies for the vetting of personnel for: (a) eligibility to work in the UK; (b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure; and (c) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006

3 ENTIRE AGREEMENT

3.1 The Agreement constitutes the entire agreement between the Parties, including the Terms and Conditions, the Specification and the Contractor's Tender, and this supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause 3.1 shall not exclude liability in respect of any fraudulent misrepresentation.

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4 NOTICES

- 4.1 Any notice required by the Agreement to be given by either Party to the other shall be in writing and shall be served personally or by sending it by registered post or recorded delivery to the most appropriate address.
- 4.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served on the second Business Day after posting or at the time recorded by the delivery service.

5 CONTRACT PERIOD

- 5.1 The Agreement shall take effect on the Services Commencement Date and subject to clause 5.2 shall continue for the Contract Period to the Expiry Date, unless terminated early in accordance with clause 35.
- 5.2 The Council shall have the option to extend this Agreement for a two further periods, each of 12 months. The Contractor shall be notified in writing at least six (6) months prior to the commencement of any extension period.

6 WARRANTY

- 6.1 The Contractor warrants and represents to the Council that the Services will be provided:
- 6.1.1 in a proper, skilful and workmanlike manner;
 - 6.1.2 by an organisation that has the right, power and authority to enter into this Agreement and to perform the Services required;
 - 6.1.3 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice and, where applicable, will be subject to staff vetting procedures including checks by the Disclosure and Barring Service or any replacement thereof and any security policy notified to the Contractor from time to time;
 - 6.1.4 to conform in all respects with the requirements of any applicable law from time to time in force and that it has and will continue to hold all necessary (if any) regulatory approvals from any regulatory body necessary to perform the Contractor's obligations under the Agreement;
 - 6.1.5 with the Contractor having and continuing to have all necessary rights

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in and to any software or Intellectual Property Rights or any other materials made available by the Contractor to the Council, as are necessary to perform the obligations under this Agreement;

6.1.6 with the Contractor not being in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement on which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement;

6.1.7 in accordance with the Agreement and any proposals provided by the Contractor; and

6.1.8 to the reasonable satisfaction of the Authorised Officer.

6.2 Without prejudice to the Council's rights to terminate (refer to clause 35 (Termination)), if any of the Services supplied are not in accordance with the Agreement, the Council shall be entitled to:

6.2.1 require the Contractor to provide replacement Services in accordance with the Agreement as soon as reasonably practicable and in any event within ten (10) Business Days of a request to do so; or

6.2.2 (subject to clause 13 (Insurance)) require proportional compensation of sums paid to the Contractor and recovery of additional expenditure reasonably incurred by the Council in obtaining replacement Services.

7 NO WAIVER

7.1 Failure by either Party at any time to enforce any one or more of the provisions of this Agreement or to require performance by the other Party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement nor affect the validity of the Agreement or any part of it or the right of the Parties to enforce any provision in accordance with its terms.

7.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 4 (Notices).

8 PREVENTION OF BRIBERY

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- 8.1 The Contractor shall not, and shall procure that any Sub-contractor and all Contractor Employees shall not, in connection with this Agreement commit a Prohibited Act.
- 8.2 The Contractor warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 8.3 The Contractor shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.
- 8.4 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any sub-contractor or Contractor Employees from committing a Prohibited Act and shall enforce it where appropriate.
- 8.5 If any breach of this clause 8 is suspected or known, the Contractor must notify the Council immediately. If the Contractor notifies the Council that it suspects or knows that there may be a breach of this clause 8, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.
- 8.6 The Council may terminate this Agreement by written notice with immediate effect if the Contractor, Sub-contractor or Contractor Employees (in all cases whether or not acting with the Contractor's knowledge) breaches this clause 8.
- 8.7 Any notice of termination under clause 8.5 must specify:
- 8.7.1 the nature of the Prohibited Act;
 - 8.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and
 - 8.7.3 the date on which this Agreement will terminate.
- 8.8 Despite clause 34 (Dispute Resolution Procedure), any dispute relating to:
- 35.7.1.1 the interpretation of this clause 8; or
 - 35.7.2 the amount or value of any gift, consideration or commission,

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shall be determined by the Council and its decision shall be final and conclusive.

8.9 Any termination under this clause 8 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

9 SEVERANCE

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

10 ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY

10.1 Neither the Council nor the Contractor shall assign or sub-contract this Agreement or any part thereof without the prior written consent of the other Party. Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Agreement.

10.2 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, Sub-contractor, servants, agents and Employees as though they were its own.

10.3 In the event that the Council assign, charge, mortgage, novate, sub-contract, transfer, or delegate or deal in any other manner with all or any of its rights under the Agreement the Contractor shall continue to provide the Services as agreed under this Agreement, at no additional cost in so far as no additional obligations are placed upon the Contractor in performing the Services.

11 NO AGENCY OR PARTNERSHIP

11.1 Nothing contained in this Agreement, and no action taken by the Parties pursuant to this Agreement, will be deemed to constitute a relationship between the Parties of partnership, joint venture, principal and agent or employer and employee. Neither Party has, nor may it represent that it has, any authority to act or make any commitments on the other Party's behalf.

12 THIRD PARTY RIGHTS

12.1 Any Replacement Contractor may enforce any rights given under the Contracts (Rights of Third Parties) Act 1999 but nothing in this Agreement shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation of this Agreement and no supplemental or ancillary agreement to this

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Agreement shall create any such rights unless expressly so stated in any such agreement by the Parties. This does not affect any right or remedy of a third party which exists or is available from the Contracts (Rights of Third Parties) Act 1999.

13 LIABILITY AND INSURANCE

13.1 The Contractor shall at all times throughout the Contract Period maintain in force such policies of insurance with reputable insurers or underwriters as are sufficient to cover any liability arising under this Agreement, including:

13.1.1 employer's liability insurance;

13.1.2 professional indemnity insurance; and

13.1.3 public liability insurance.

13.2 On the Services Commencement Date and on each anniversary of the Services Commencement Date and/or upon request by the Council, the Contractor shall provide evidence that all such insurances are current and valid and that all related premiums have been paid.

13.3 The Contractor shall fully indemnify and keep fully indemnified the Council against all insurance related actions, claims, damages, expenses, legal costs, proceedings and any other liabilities whatsoever arising out of, in respect of, or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by an act or omission of the Contractor. This clause 13.3 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default or by any circumstances within its control.

13.4 The Contractor shall notify the Council as soon as possible and in any event within two (2) Business Days of any incident that may lead to any insurance claim, demand or proceedings and shall supply such particulars or details thereof as the Council shall reasonably require.

13.5 The provisions of this clause 13 shall survive the expiry or termination of this Agreement for whatever reason.

14 LIMITATION OF LIABILITY

14.1 Neither Party excludes or limits liability to the other for death or personal injury

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caused by its negligence or for any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or any such liability which it is not permissible to exclude by law.

14.2 The Council's total liability arising under, or in connection with, this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited as follows:

14.2.1 for non-payment of invoices for Services received, the Council's liability will be limited to the amount unpaid; and

14.2.2 for any other aspect of the Services, the Council's liability will be limited to the amount paid for the Services under the Agreement.

14.3 The Contractor's total liability arising under, or in connection with, this Agreement, whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, shall be limited to one (1) million pounds or one hundred and twenty five percent (125%) of the total value of the Agreement, whichever is the greater.

14.4 Subject to clause 35.1, neither Party will be liable to the other Party for:

14.4.1 any indirect, special or consequential loss or damage; or

14.4.2 any loss of profits, turnover, business opportunities or damage to goodwill (whether direct or indirect).

14.5 Subject to clause 36.2 the Council may, amongst other things, recover as a direct loss:

14.5.1 any additional operational and/or administrative costs and expenses arising from the Contractor's default;

14.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Contractor's default;

14.5.3 the additional cost of procuring replacement Services for the remainder of the Contract Period; and

14.5.4 any anticipated savings not realised.

15 FORCE MAJEURE

15.1 Neither party shall be liable for failure to perform its obligations under the Agreement if such failure results from Force Majeure.

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- 15.2 If the Council is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. Such suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Agreement.
- 15.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or Sub-contractors, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under clause 6 shall not be regarded as an event of Force Majeure.
- 15.4 Neither Party shall incur any liability in the event that it is delayed in the performance of its obligations as a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Agreement.
- 15.5 If a Party is unable to perform its obligations under the Agreement as a result of a Force Majeure event for a period in excess of 2 months (commencing on the date of the notice provided in accordance with clause 35.5), the other Party may terminate the Agreement by notice in writing with immediate effect.
- 15.6 If the Agreement is terminated in accordance with 15.5 neither Party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.
- 15.7 If either Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall notify the other as soon as reasonably possible and shall estimate the period such failure or delay shall continue.

16 HEALTH AND SAFETY

- 16.1 The Contractor and all persons engaged in providing the Services shall comply fully with the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations, all health and safety policies of the Council and any other Acts, Regulations and Approved Codes of Practice relating to the health and safety of employees and others who may be affected by the Contractor's work activities. Additional Contractor obligations related to health and safety are detailed in Specification schedule 2 (Service Requirements).

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17 AUDITS AND INSPECTION OF CONTRACTOR'S PREMISES

- 17.1 The Contractor shall permit the Council during normal working hours to make any audits or inspections which may reasonably be required in respect of the Contractor's premises in relation to this Agreement.
- 17.2 The Council shall at all times comply with any health and safety requirements when exercising its rights under this clause 17.
- 17.3 If the Council causes material damage to any asset in exercising any right under this clause 17, then the Council shall be liable to the Contractor for the reasonable and proper costs directly caused by such damage.

18 COMMITMENT TO ENVIRONMENTAL IMPROVEMENT

- 18.1 The Contractor shall work with the Council in so far as necessary to improve the effects of the Service on the environment both in terms of the direct effects and the service effects. The Contractor shall use its best endeavours to strive to improve the environmental efficiency in the provision of the Services and shall to this end provide a flexible approach to the management of these Services and shall during the Contract Period:
- 18.1.1 demonstrate to the Council a commitment to continuous improvement and to employing the best practicable environmental options in the provision of the Services;
 - 18.1.2 demonstrate to the Council a commitment to compliance with environmental legislation as may change from time to time; and
 - 18.1.3 demonstrate to the Council a commitment to managing and operating the Service in accordance with best practice.
- 18.2 The Contractor shall consider environmental efficiency on an ongoing basis throughout the provision of the Services. In this respect, the Contractor shall have regard to the following:
- 18.2.1 energy management – the efficient use of energy for buildings and equipment used;
 - 18.2.2 resource management – the efficient use of sustainable resources;
 - 18.2.3 transport management – the use of energy efficient vehicles;

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18.2.4 waste management – the use of safe and environmentally sound disposal/treatment methods for waste generated directly by the Contractor; and

18.2.5 water management – the efficient use and reuse of water.

19 EMERGENCY PREPAREDNESS AND RESPONSE

19.1 The Contractor shall have in place and shall present to the Council an Emergency Preparedness and Response Plan which sets out the procedures to be adopted by the Contractor in the event of an emergency situation that will prevent the Contractor delivering the Services and including the procedures to be taken by the Contractor in planning and providing for any such event.

19.2 The Contractor shall ensure that their Emergency Preparedness and Response Plan is subject to regular review, testing and updating and shall ensure that the results and updates thereof are conveyed to the Council.

20 COMPETITION ACT

20.1 The Council reserves the right in appropriate circumstances to make this Agreement and all documents related or connected to it available to the Competition and Markets Authority and other statutory regulators.

21 WHISTLEBLOWING

21.1 The Council is committed to tackling fraud, abuse and other forms of malpractice and has a whistle blowing policy which also applies to the Council's Contractors. A copy is available upon request. If the Contractor has any concerns about anything that the policy covers they should contact a member of the Council's senior management team.

22 COSTS AND EXPENSES

22.1 Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Agreement.

23 DATA PROTECTION

23.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services and all of its Sub-contractors) comply with all requirements under the DPA (as amended or re-enacted from time to time).

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- 23.2 The Contractor shall process Personal Data only to the extent, and in such a manner, as is necessary for the purposes of this Agreement and in accordance with the Council's instructions from time to time. The Contractor will keep a record of any processing of Personal Data it carries out on behalf of the Council.
- 23.3 The Contractor shall promptly comply with any request from the Council requiring the Contractor to amend, transfer or delete Personal Data.
- 23.4 If the Contractor receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data or to either Party's compliance with the DPA and the data protection principles set out in the DPA, it shall immediately notify the Council and it shall provide the Council with full co-operation and assistance in relation to any such complaint, notice or communication.
- 23.5 At the Council's request, the Contractor shall provide to the Council a copy of all Personal Data held by it in the format and on the media reasonably specified by the Council.
- 23.6 The Contractor shall not transfer Personal Data outside the European Economic Area without the prior written consent of the Council.
- 23.7 The Contractor shall promptly inform the Council if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Contractor will restore such Personal Data at its own expense.
- 23.8 The Contractor shall not disclose Personal Data to any third party without the prior written agreement of the Council.
- 23.9 The Contractor shall ensure that Employees' access to Personal Data is limited to those Employees who need access to that Personal Data to meet the Contractor's obligations under this Agreement and, in the case of any such access by any Employee, such access is restricted only to part or parts of that Personal Data as is strictly necessary for the performance of that Employee's duties.
- 23.10 The Contractor shall ensure that all Employees are informed of the confidential nature of Personal Data, have undertaken training in the laws relating to handling Personal Data and are aware both of the Contractor's duties and their own personal duties and obligations under such laws and this Agreement.
- 23.11 The Contractor shall take reasonable steps to ensure the reliability of any of the Contractor's Employees who have access to Personal Data.

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- 23.12 All Personal Data provided to the Contractor and/or collected on behalf of the Council under this Agreement remains the property of the Council and shall, following the expiry or termination of this Agreement, be either returned to the Council or destroyed by the Contractor, in a manner previously agreed with the Contractor.
- 23.13 The Contractor warrants that it will process Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 23.14 The Contractor warrants that it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure the Council's compliance with the seventh data protection principle.
- 23.15 The Contractor shall notify the Council immediately if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of Personal Data.
- 23.16 The Contractor may only authorise a third party (Sub-contractor) to process Personal Data subject to the Council's prior written consent where the Contractor has supplied the Council with full details of such Sub-contractor; the Contractor has provided that the Sub-contractor's agreement is on terms which are substantially the same as those set out in this Agreement; and the Contractor has provided that the Sub-contractor's agreement terminates automatically on termination of this Agreement for any reason.
- 23.17 Where any Sub-contractor fails to fulfil its data protection obligations under such written terms of contract as provided for in clause 23.16, the Contractor shall remain fully liable to the Council for the performance of the Sub-contractor's obligations under such agreement.

24 FREEDOM OF INFORMATION

- 24.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA, the Transparency Code and the EIR and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with these information disclosure requirements.
- 24.2 The Contractor shall and shall procure that its Sub-contractors shall:

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- 24.2.1 acknowledge receipt of all information requests made to the Contractor by the Council under FOIA and EIR as soon as practicable after receipt of the request and in any event within two (2) Business Days of receipt of the request;
- 24.2.2 provide the Council with a copy of all relevant information in its possession or power in the form that the Council requires within five (5) Business Days (or such other period as the Council may specify) of the Council requesting that information; and
- 24.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to FOIA and EIR information requests within the time specified in section 10 of the FOIA or regulation 5 of the EIR.
- 24.3 The Council shall be responsible for determining at its absolute discretion whether commercially sensitive information and/or any other information:
- a) is exempt from disclosure in accordance with the FOIA, EIR or Transparency Code; or
 - b) is to be disclosed in request to a response for information.
- 24.4 In no event shall the Contractor respond directly to a FOIA or EIR information request unless expressly authorised to do so by the Council.
- 24.5 The Contractor acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice (the Code) on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIR, or the Transparency Code to disclose information:
- 24.5.1 without consulting the Contractor; or
 - 24.5.2 following consultation with the Contractor and having taken its views into account,
- provided always that where this clause 24.5 applies the Council shall, in accordance with any recommendations of the code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

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24.6 The Contractor shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

24.7 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council may disclose information on its website in relation to monthly expenditure over £500 (five hundred pounds), in relation to this Agreement. The information will include the Service Provider's name and the monthly Periodic Payment paid or other as may be required. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.

25 RECORD KEEPING AND MONITORING

25.1 In order to assist the Council in its auditing, monitoring and record keeping requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Agreement has been completed, full and accurate records of the Agreement including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Agreement.

25.2 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Agreement. Detailed reporting requirements are included in Specification schedule 5 (Reporting Requirements).

26 INTELLECTUAL PROPERTY

26.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

26.1.1 provided to the Contractor by the Council shall remain the property of the Council and the Council shall be entitled to arrange, copy, copyright, modify and use the same;

26.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Services shall, unless otherwise stated within the Agreement, belong to the Council.

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- 26.2 The Contractor grants the Council a non-exclusive licence to use any pre-existing Intellectual Property Rights in order to make use of the Services.
- 26.3 At the request of the Council the Contractor shall do all such things and sign all documents or instruments reasonably necessary in the Council's opinion to enable the Council to obtain, defend and enforce its Intellectual Property Rights in such Materials.
- 26.4 The Contractor warrants that the Materials will (so far as they do not comprise Material originating from the Council) be original works of authorship by the Contractor and the use or possession by the Council will not subject the Council to any claim for infringement of any proprietary rights of any third party.
- 26.5 The Contractor agrees to notify the Council in writing of any breach or claim of breach of any intellectual property in use for the purposes of this Agreement and shall indemnify the Council against any and all claims, liability, loss, damages, costs and expenses which the Council may incur or suffer as a result of a breach by the Contractor of the warranties set out in this clause 26.
- 26.6 On expiry or termination of the Agreement the Contractor shall at the request of the Council immediately return to the Council all Materials, works or records held in relation to the Services, including any back-up media.
- 26.7 The Council shall be entitled to use, modify, arrange and copy all property, copyright and all other Intellectual Property Rights (including but without limitation the database rights in any database ("the intellectual property") in the Materials developed, originated, written or prepared by the Contractor (whether individually or jointly with the Council) for the purposes of this Agreement, which intellectual property the Contractor by this Agreement assigns to the Council with full title guarantee.
- 26.8 The Contractor agrees that the Council is entitled to all property, copyright and other Intellectual Property Rights in all Materials developed, originated, written, prepared or contributed to by the Council whether or not changed or developed by the Contractor.
- 27 **CONFIDENTIALITY**
- 27.1 The Contractor and the Council shall keep confidential all information shared between them which may be designated as confidential and obtained under or in connection with this Agreement and shall not divulge the same to any third party

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without the written consent of the Party in whom the ownership of the Confidential Information is vested.

27.2 The provisions of this clause 27 shall not apply to:

27.2.1 any information in the public domain otherwise than by breach of this Agreement;

27.2.2 information obtained from a third party who is free to divulge the same;

27.2.3 any information which is personally developed; and

27.2.4 any information required to be disclosed by law.

27.3 The Contractor and the Council shall divulge Confidential Information only to those persons who are directly involved in providing the Services under this Agreement and shall ensure that such persons are aware of and comply with these obligations as to confidentiality.

27.4 The provisions of this clause 27 shall continue in perpetuity.

28 PUBLICITY AND STATEMENTS

28.1 The Contractor will not use any corporate logos of the Council nor refer to the Council or this Agreement or the Services, directly or indirectly, in connection with any product, promotion or publication, without the prior written permission of the Council. For the avoidance of doubt, the restriction contained in this clause shall apply equally to any references to the Council in any form or medium.

28.2 The Contractor shall not at any time whether during the Contract Period or thereafter make any public statement in relation to the Council or its businesses, affairs, customers or clients unless authorised by the Council and shall not after expiry or termination of the Agreement wrongfully represent themselves as being engaged by or connected to the Council.

29 AUTHORISED OFFICER

29.1 The Council shall nominate a competent Authorised Officer empowered to act on behalf of the Council for all purposes connected with the Agreement.

29.2 The Council shall ensure that the Contractor is aware who the Authorised Officer is and who, in their absence, is suitable and authorised to act in substitute.

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29.3 The Council shall forthwith give notice in writing to the Contractor of any change in the identity and contact details of the person nominated as Authorised Officer. The Council shall give maximum possible notice to the Contractor before changing its Authorised Officer.

30 CONTRACT MANAGER

30.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Agreement.

30.2 The Contractor shall ensure that the Council is aware who the Contract Manager is and who, in their absence, is suitable and authorised to act in substitute.

30.3 The Contractor shall forthwith give notice in writing to the Council of any change in the identity and contact details of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

31 KEY PERSONNEL

31.1 The Contractor shall provide to the Council an organization chart and associated names and contact details of all Employees and Sub-contractors relevant to the provision of the Services and shall provide to the Council updates thereof as this may change from time to time.

32 CONTRACT VARIATION

32.1 Subject to clause 32.2, no change, modification or variation to the Agreement is valid unless it is in writing and signed by both Parties.

32.2 The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as is practicable), variation orders requiring the addition, reduction or suspension of the required Services. Any resultant impact on the Price shall be agreed between the Parties.

33 LAW AND CHANGE IN LAW

33.1 This Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts. The Contractor shall comply at all times with the law in its performance of the Agreement.

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33.2 On the occurrence of a Change in Law which has a direct effect upon the Price, the Parties shall meet, within ten (10) Business Days of the notification of the Change in Law, to consult and seek to agree the effect of the Change in Law and any change in the Price as a result. In principle this clause 33.2 is not intended to afford the Contractor an artificial cushion from market forces. If the Parties, within twenty (20) Business Days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either Party may initiate the Dispute Resolution Procedure in accordance with clause 34.

33.3 Any agreed additional sums payable as a result of the operation of clause 33.2 shall be included in the Price and shall be applicable from the date that the Change in Law came into or will come into force. For the avoidance of doubt nothing in this Agreement is intended to allow the Contractor double recovery of any increase in costs.

34 DISPUTE RESOLUTION PROCEDURE

34.1 All disputes shall be subject to a written notice from one Party to the other Party.

34.2 If a dispute arises between the Parties in connection with the Agreement, both Parties shall each use reasonable endeavours to resolve such a dispute by means of prompt discussion at an appropriate managerial level within ten (10) Business Days of the written notice of the dispute being served by one of the Parties on the other Party, without recourse to legal proceedings.

34.3 If a dispute is not resolved within ten (10) Business Days in accordance with clause 34.2 then either Party may refer it to senior representatives of each Party for resolution. These senior representatives shall meet to discuss the disputed matter within twenty (20) Business Days of the referral, or longer period as both Parties may agree.

34.4 Provided that both Parties consent, a dispute not resolved in accordance with clauses 34.2 and 34.3, shall first be referred to mediation or other alternative resolution procedure as agreed between the Parties, each acting in good faith. If the Parties are unable to agree a resolution procedure or any aspect of a resolution procedure they will seek assistance from the Centre of Dispute Resolution at Exchange Tower, 1 Harbour Exchange Square, London, E14 9GB. Unless otherwise agreed, the Parties will share equally the costs of mediation or alternative resolution procedures and the use of mediation or alternative resolution procedures will be without prejudice to the rights of the Parties.

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34.5 Whilst any dispute is being resolved in accordance with clauses 34.2 to 34.4 inclusive, the Contractor shall continue to provide the Services in accordance with this Agreement.

35 TERMINATION

35.1 The Council shall be entitled to terminate this Agreement and the Contractor's engagement without any payment in lieu of notice, compensation or damages forthwith upon the Council becoming aware of:

35.1.1 the Contractor shall be in material or persistent breach of any of its obligations in this Agreement or shall wilfully neglect or refuse to carry out any reasonably required duties; or

35.1.2 the Contractor or anyone acting on behalf of the Contractor shall act in any way which may in the opinion of the Council bring the Council into disrepute.

35.2 The Council may forthwith terminate this Agreement and recover from the Contractor any amount the Council has lost in terminating the same, if the Contractor or anyone acting on its behalf (whether with or without the knowledge of the Contractor) shall have committed a Prohibited Act.

35.3 The Council may terminate the Agreement by notice in writing with immediate effect with no liability to make any further payment to the Contractor, other than subject to monies owed already having been accrued in accordance with clause 36.1, where the Contractor:

35.3.1 undergoes a change of Control, which impacts adversely and materially on the performance of the Agreement; or

35.3.2 becomes insolvent, bankrupt, enters into liquidation, enters into a voluntary arrangement, appoints a receiver or such similar event in any jurisdiction save for the purposes of a solvent reconstruction or amalgamation; or

35.3.3 is guilty of any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Contractor or the Council into disrepute or is materially adverse to the interests of the Council; or suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or is unable to pay its

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debts within the meaning of section 123 of the Insolvency Act 1986 or the Contractor ceases to trade; or

- 35.3.4 commits any serious or repeated breach of non-observance of any of the provisions of the Agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council.
- 35.4 The proper exercise by the Council of its right of termination under this clause 35 shall be without prejudice to any other rights or remedies which the Council may have or be entitled to exercise against the Contractor.
- 35.5 Either Party may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the other Party with immediate effect if that other Party commits a material breach and if:
- 35.5.1 the material breach is not remedied within thirty (30) days, or such other period as may be agreed between the Parties, after issue of a written notice specifying the material breach and requesting it to be remedied; or
- 35.5.2 the material breach is not, in the opinion of the Council, capable of remedy.
- 35.6 For the purposes of clause 35.5 material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Council would otherwise derive from:
- 35.6.1 a substantial portion of this Agreement; or
- 35.6.2 any of the obligations set out in Specification schedule 2 (Service Requirements) over any six (6) month period during the term of this Agreement.
- 35.7 In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 35.8 The Council reserves the right to terminate this Agreement in whole or in part, at any time by giving three (3) months prior notice in writing to the Contractor.
- 36 **CONSEQUENCES OF TERMINATION**
- 36.1 On termination of the Agreement pursuant to clauses 35.1, 35.2 and 35.7 the Council shall:

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- 36.1.1 pay to the Contractor sums due and reasonably incurred up to the date of termination where the Council has received goods or Services to the equivalent value; and
 - 36.1.2 pay to the Contractor sums due for expenditure incurred after the date of termination only in so far as it is a result of commitments entered into by the Contractor in good faith before the date on which notice of termination was given and which cannot be voided on or before the termination date. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence of losses reasonably and actually incurred by the Contractor as a result of termination within five (5) Business Days of receiving the notice of termination,
 - 36.1.3 provided that any such sum payable in accordance with this clause 36.1 shall only be payable by the Council if it would have been payable in accordance with this Agreement if it had not been terminated.
- 36.2. The Council shall not be liable under clause 36.1.2 to pay any sum which was claimable under insurance held by the Contractor, or when added to any sum paid or due to the Contractor under the Agreement, exceeds the total sum that would have been payable to the Contractor if the Agreement had not been terminated prior to the Expiry Date.

37 SURVIVAL

- 37.1 The following clauses will survive termination or expiry of the Agreement: clause 9 (Severance), clause 13 (Insurance), clause 23 (Data Protection), clause 24 (Freedom of Information), clause 25 (Record Keeping and Monitoring), clause 26 (Intellectual Property), clause 27 (Confidentiality), clause 28 (Publicity and Statements), clause 36 (Consequences of Termination) and clause 43 (TUPE).

38 PERFORMANCE

- 38.1 The Contractor will not during the duration of the Agreement undertake any additional activities or accept other engagements which would directly interfere with or preclude the performance of the duties required from time to time under this Agreement or which might lead to any conflict of interest between the Contractor and the best interests of the Council.
- 38.2 The Contractor shall, in performance of the Services, comply with the requirements of the Cabinet Office report on Data Handling Procedures in

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- Government and with any security policy notified by the Council to the Contractor from time to time.
- 38.3 The Contractor is deemed to have satisfied himself as to the scope, extent and location of work to be carried out under the Agreement and shall perform the Services in accordance with the terms and conditions set out in this Agreement and shall comply and co-operate with any reasonable instructions given by the Authorised Officer.
- 38.4 The Contractor will be responsible at its own cost and expense for the provision of all necessary staff, materials and equipment for the management and execution of any obligation under the Agreement.
- 38.5 The Contractor shall comply with the Vetting Procedures in respect of all staff employed or engaged in the provision of Services whose role involves the handling of information of a sensitive or confidential nature or information that is subject to any relevant security measures.
- 38.6 The Contractor shall train and ensure that all staff employed or engaged in the provision of the services are trained to an appropriate standard for the purposes of performing the Agreement.
- 38.7 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Agreement, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the Contract Period accordingly.
- 38.8 If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
- 38.9 If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
- 38.10 The Council retains the Contractor for the performance of the Services on a non-exclusive basis and the Contractor accepts such appointment to provide the Services on the terms of this Agreement.
- 38.11 Where an Employee or Sub-contractor employed by the Contractor is required to carry out any activity alongside the Council's employees in any premises, the Contractor will ensure that each such employee or Sub-contractor will comply with

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the Council's employment policies and codes of practice relating to discrimination and equal opportunities. The Contractor *will* notify the Council in writing as soon as it becomes aware of any investigation or proceedings brought against the Contractor under the Equality Act in connection with this Agreement and shall:

- 38.11.1 provide any information requested by the investigating body, court or tribunal in the timescale allotted;
 - 38.11.2 attend (and shall permit a representative from the Council to attend) any associated meetings;
 - 38.11.3 promptly allow access to any relevant documents and information; and
 - 38.11.4 co-operate fully and promptly with the investigatory body, court or tribunal.
- 38.12 The Contractor shall include in the conditions of contract for each Sub-contractor obligations substantially similar to those set out in this clause 38.

39 PRICE AND PAYMENT

- 39.1 The Council shall pay the Price for the Services to the Contractor as set out in Specification schedule 4 (Payment Mechanism).
- 39.2 Subject to the reporting requirements set out in Specification schedule 5 (Reporting Requirements), the Price shall be paid by the Council monthly in arrears, provided that the Contractor shall within fifteen calendar days of the end of each month submit to the Council a proper invoice containing appropriate details together with documentary evidence as may be required by the Authorised Officer.
- 39.3 Payments made by the Council shall be subject to each invoice quoting a valid purchase order number and failure to do so will result in the invoice being returned unpaid. The Contractor shall send all invoices via email as a PDF attachment to creditors@rutland.go.uk and the Authorised Officer until advised otherwise by the Council.
- 39.4 Payment of any undisputed invoice will be made no later than thirty (30) calendar days following the date of receipt and agreement of the invoice by the Council for Services completed to the satisfaction of the Council.
- 39.5 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the

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Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.

39.6 The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Agreement. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Agreement or otherwise.

39.7 The Council, acting by the Authorised Officer, may from time to time propose an increase, decrease or change in the scope, frequency or performance of the Services. Any such proposed variation must be discussed with the Contractor. Where such increase, decrease or change in the scope is agreed with the Contractor, the Contractor shall be bound to carry out the Services as so varied. Upon such variation the Price payable to the Contractor shall be revised in accordance with 32.2.

39.8 Where any variation to the scope, frequency or performance of the Services is agreed in accordance with clause 32 the Contractor and the Council shall jointly agree to a revision in the Price to properly and fairly reflect the nature and extent of the variation. The Contractor shall provide the Authorised Officer with such information and documentation as the Authorised Officer may reasonably require to reach the calculation.

40 RECOVERY OF SUMS

40.1 If any sum of money shall at any time have been, or becomes, recoverable from, or payable by the Contractor to the Council, the Council is entitled to deduct that money from any moneys due under this Agreement or any other contract between the Council and the Contractor, irrespective of when such money shall have been or becomes payable or recoverable.

41 CORPORATE REQUIREMENTS

41.1 The Contractor shall (and shall procure that the Contractor's Employees shall):

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- 41.1.1 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The Contractor shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998;
 - 41.1.2 not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010; and
 - 41.1.3 co-operate with and assist the Council to satisfy its duty under the Equality Act 2010 to eliminate unlawful discrimination and to promote equality of opportunity.
- 41.2 The Contractor shall notify the Council in writing as soon as it becomes aware of any investigation or proceedings brought against the Contractor under the Equality Act 2010 in connection with this Agreement and shall:
- 41.2.1 provide any information requested by the investigating body, court or tribunal in the timescale allotted;
 - 41.2.2 attend (and shall permit a representative from the Council to attend) any associated meetings;
 - 41.2.3 promptly allow access to any relevant documents and information; and
 - 41.2.4 co-operate fully and promptly with the investigatory body, court or tribunal.
- 41.3 The Contractor shall comply with all Council policies and rules, such as, but not limited to:
- 41.3.1 equality and diversity policies; and
 - 41.3.2 information security rules.
- 41.4 The Contractor's Employees, engaged within the boundaries of any of the Council's premises, shall comply with such regulations, requirements and rules (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- 41.5 The Council reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

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41.5.1 any member of the Contractor's Employees; and/or

41.5.2 any person employed or engaged by a Sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

41.6 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.

41.7 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Agreement to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Council may reasonably desire.

41.8 The Contractor shall replace any of the Contractor's Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's employees for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

41.9 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.

41.10 If the Contractor has a finding against it relating to its obligations under clause 41.9 it will provide the Council with:

41.10.1 details of the finding; and

41.10.2 the steps the Contractor has taken to remedy the situation.

41.11 The Contractor shall include in the conditions of contract for each Sub-contractor obligations substantially similar to those set out in this clause 41.

41.12 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause 41.

42 PERFORMANCE BOND OR GUARANTEE

42.1 If the Contractor is a subsidiary company within the meaning of section 1159 of the Companies Act 2006, it shall, prior to the Service Commencement Date, have

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its holding company or companies provide a guarantee to secure the required performance.

42.2 If the Contractor is not a subsidiary company within the meaning of section 1159 of the Companies Act 2006, it shall, prior to the Service Commencement Date, provide to the Council a performance bond, being a sum equal to 10% of the Price payable by the Council to the Contractor over the following 12months.

43 TUPE

43.1 If the termination of this Agreement could constitute a “relevant transfer” as defined in TUPE (the Transfer of Undertakings (Protection of Employment) Regulations 2006), the Contractor undertakes to the Council to comply with any of its obligations under TUPE.

43.2 If there is a transfer to the Council or any replacement contractor or Sub-contractor on the expiry or early termination of the Agreement or part of the Agreement, the Contractor will use reasonable endeavours to procure that it or any Sub-contractor will:

- a. comply with its obligations under TUPE; and
- b. immediately upon request provide to the Council a list containing details of the employees eligible to transfer and such other appropriate information reasonably required by the Council to enable it to disclose as appropriately to third parties invited to tender for any subsequent contract(s) covering the services or works concerned. This list and details to be provided to the Council is to contain the following:
 - i. nature of job/job description;
 - ii. current salary;
 - iii. length of service;
 - iv. contracted hours and percentage of those contracted hours spent on the Agreement;
 - v. retirement age;
 - vi. arrangements for overtime and whether this is contractual;
 - vii. any factors that may affect redundancy entitlement;

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- viii. any outstanding industrial injury claims or other claims or actions;
- ix. whether any probationary period is current;
- x. period of notice to terminate employment;
- xi. current pay agreement and any agreed settlement yet to come into effect;
- xii. age;
- xiii. sex;
- xiv. annual leave entitlement;
- xv. sick leave entitlement;
- xvi. maternity and paternity leave arrangements;
- xvii. special leave entitlement;
- xviii. other benefits e.g. season tickets, loans, car provision;
- xix. whether they are a member of an Admitted Body Scheme or a member of a company pension scheme;
- xx. details of Admitted Body Scheme or company pension scheme;
- xxi. location and contractual provisions relating to this;
- xxii. terms and conditions of employment;
- xxiii. evidence of checks to comply with the Asylum and Nationality Act 2006; and
- xxiv. any other information reasonably requested by the Council.

43.2.1 The Contractor warrants that the above information when provided to the Council will be accurate and complete in all respects, that it will immediately inform the Council in writing of any changes to that information between the date provided and the date of any replacement agreement and that it will have discharged all known liabilities relating to its Employees. If the Contractor fails to provide the required information or does not provide it accurately and completely, updated as necessary, the Council reserves the right to exclude the Contractor from being invited to tender for any subsequent contract(s)

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(if the Contractor would otherwise have qualified for invitation) or to disqualify the Contractor from submitting a bid for any subsequent contract(s) or to reject a bid from the Contractor for any subsequent contract(s).

- 43.3 The Contractor shall take all reasonable steps to ensure that otherwise than in the bona fide course of business it (or its Sub-contractor) it will not without the consent of the Council in any period between the date on which the information is provided and any expiry or termination of the Agreement:
- a. vary or purport to vary the terms and conditions of employment of Employees eligible for TUPE transfer;
 - b. increase the number of transferring Employees; or
 - c. assign or redeploy any transferring Employees to other duties unconnected to the Agreement to avoid a transfer.
- 43.4 The Contractor will use its reasonable endeavours to procure (and shall use its reasonable endeavours to procure that any Sub-contractor shall procure) that any Employee eligible for TUPE transfer is not dismissed for a reason connected to the transfer and will indemnify the Council against direct loss, damages, claims, costs and expenses suffered or incurred by the Council arising from the Contractor's non-compliance with TUPE.

RUTLAND COUNTY COUNCIL – TREATMENT OF DMR

TERMS AND CONDITIONS

IN WITNESS WHEREOF the Parties hereto have executed and delivered this document as a Deed on the date of this document:

EXECUTED under the Common Seal of

RUTLAND COUNTY COUNCIL DISTRICT COUNCIL

In the presence of

Duly Authorised Officer

EXECUTED by

[CONTRACTOR NAME]

Duly Authorised Person