1. CONDITIONS OF CONTRACT

**THIS AGREEMENT is made the day of 2019**

BETWEEN

1. **NORTHAMPTONSHIRE COUNTY COUNCIL** of One Angel Square, Angel Street, Northamptonshire NN1 1ED **(“the Client”)**

AND

**(2) [FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (Supplier).

**IT IS AGREED AS FOLLOWS**

**1. BACKGROUND:**

* 1. The Contractor has the necessary skill, knowledge and experience to perform the services.
  2. In reliance upon that skill, knowledge and experience the Council wishes to appoint the Contractor to provide the services and the Contractor agrees to accept the appointment on the following terms.

**2. DEFINITIONS:**

2.1 Authorised Representatives: the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 4.

2.2 Authority Assets: any materials, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services**.**

2.3 Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

2.4 **“Change in Law”** means the coming into effect of any Act of Parliament or any subordinate legislation, statutory instrument or order

2.5 “**Commencement Date**” means XXX xxx or such other date as agreed between the Council and the Contractor.

2.6 “**Contract**” means this contract;

2.7 “**Contract price**” means the price exclusive of any applicable Tax, payable to the Contractor by the Council under the Contract for the full and proper performance by the Contractor of its obligation as detailed in the Pricing Schedule;

2.8 **“Contract Term”** means twelve (12) months from the Commencement Date or such lesser period as a result of the Contract being terminated earlier in accordance with the provisions of this Contract.

2.9 “**Contractor**” means the person, firm or company with whom the Council enters into this contract and shall include (where the context so admits) the personal representatives, permitted assigns or successor of the Contractor;

2.10 “**Council**” means Northamptonshire County Council;

2.11 “**Force Majeure Event**”means any cause materially affecting the performance of the Services under the Contract arising from any act, events, omissions, happenings or non-happenings beyond the parties reasonable control including, without limitation, acts of God, war, riot, fire, flood or any disaster affecting either of the parties but will not mean any labour dispute between the Service Provider and the Service Provider’s employees, agents or sub-contractors;

2.12 **“Landfill Gases”**  means methane and CO2 and any other gas typically created as the by-product of a residual waste landfill site;

2.13 **“Pricing Schedule”** means the pricing schedule as set out in Appendix 2 – Charges Schedule;

2.14 “**Prohibited Act**”means

(a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward:

(i) for doing or not doing (or for having done or not having done)

any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or

(ii) for showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;

(b) committing any offence:

(i) section 117 of the Local Government Act 1972 or the Bribery Act 2010 of Fraud Act 2010;

(ii) under legislation creating offences in respect of fraudulent acts;

or

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

(ii) defrauding or attempting to defraud or conspiring to defraud the Authority;

2.15 “**Reasonable and Prudent Operator**” shall mean a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with applicable law engaged in the same type of undertaking in the same or similar circumstances and conditions and any reference to the standard of Reasonable and Prudent Operator or “**RPO**” shall be construed accordingly;

2.16 “**Services**” means the services, duties and responsibilities to be provided, performed and observed by the Contractor pursuant to this Contract and as specified in the Specification.

2.17 **“Site”** means the location(s) where the services will be carried out.

**3. duration**

3.1 The Contract and the rights and obligations of the parties shall take effect on the Contract Commencement Date and shall continue until the expiry of the Contract Term or earlier termination of the Contract

* 1. Subject to satisfactory performance by the Contractor during the Term, the Council may serve notice on the Contractor which the Contractor will accept to extend the Contract for a further period of up to twelve (12) months. This notice may be served at any time before the end of the Term. The Clauses in this Contract will apply throughout any such extended period unless otherwise stated to the contrary and the Price will remain the same.

**4. Price and Payment**

4.1 In consideration of the performance of the Contractor’s obligation under the contract by the Contractor, the Council shall pay the for the Services in accordance with the Pricing Schedule;

4.2 The Council shall pay the undisputed sums due to the Contractor in cleared funds within thirty (30) days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the reasonable satisfaction of the Council;

4.3 The Council may reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequate services;

* 1. Payment by the Council shall be without prejudice to any claims or rights which the Council may have against the Contractor and shall not constitute any admission by the council as to the performance by the Contractor of its obligation hereunder.

**5. NOTICES**

Any notice, request, demand, consent or approval given under or in connection with this Contract must be given in writing. Any such notice, request, demand, consent or approval shall be sent to the registered office or principal business address of either party and, if sent by post, shall be deemed to have been received on the second Working Day following the date of posting.

**6. The Service standard**

The Contractor will at all times throughout the duration of this Contract:

6.1 comply with the terms of this Contract and any specifications or requirements included or referred to in the Contract;

6.2 exercise and continue to exercise the degree of skill, care and diligence reasonably to be expected of an RPO performing the Services based on and subject to the information on the Site made available by the Client;

6.3 carry out all reasonable directions of the Council’s representative;

6.4 use its reasonable endeavours to secure and achieve continuous improvement in the delivery of the Services during the Contract Term;

6A **CLIENT OBLIGATIONS**

6A.1 The Client confirms that it has made fair and reasonable disclosure of all relevant information relating to the Site to enable the Contractor to provide the Services.

6A.1 The Client shall retain liability for the consequences or any loss or damage occurring as a result of the escape of Landfill Gases from the Site or combustion of Landfill Gases, save where such the loss or damage due to the escape or combustion of Landfill Gases is the result of the Contractor’s negligence or the Contractor failing to act as an RPO.

**7. Data protection**

The Contractor hereby consents to the information provided in pursuance of the contract being published by the Council at its discretion. The contractor shall comply with any notification requirements and its obligations under the Data Protection act 1998. The Contractor shall ensure that it does nothing knowingly or negligently which places the Council in breach of the Council’s obligations under the 1998 Act.

**8. FREEDOM OF INFORMATION**

The Contractor recognises the Council's current and future obligations under the Freedom of Information Act 2000 and any codes of practice issued by the Government and the appropriate enforcement Agencies. The Contractor will comply with this legislation in so far as it places obligations upon the Council in the performance of its obligations under any contractual arrangement entered into. The Contractor will provide such assistance and support which may be requested from time to time by the Council for the purposes of enabling or assisting the Council to comply with the legislation.

1. In the event of a request made on the Council for access to information under the FOIA or any notice, recommendation or complaint made to the Council in relation to the FOIA, the contractor will provide to the Council in relation to an access request, any details in respect of the information as the Council may request and a copy of the relevant information where the Council requests such copy; and in relation to any notice, recommendation or complaint, any background details, supporting documentation and copy information which the Council may request in order to deal with such notice, recommendation or complaint within 5 Business Days of the date of the request from the Council.
2. The Contractor acknowledges that the Council is obliged under the FOIA to disclose information, including information relating to its appointment under this Framework Agreement and the Contract, to third parties, subject to certain exemptions. The Contractor further accepts and acknowledges that the decision to disclose information and the application of any such exemptions under the FOIA will be at the Council’s sole discretion PROVIDED THAT the Council shall act reasonably and proportionately in exercising its obligations under the FOIA as to whether any exemptions under section 43 of the FOIA may apply to protect the Service Provider’s legitimate commercial and trade secrets.

**9. CONFIDENTIALITY**

Subject to Clause 7 (Data Protection) and Clause 8 (Freedom of Information) the Contractor shall not, without the prior written consent of the Council, during or after the termination or expiry of this Contract disclose, directly or indirectly, to any person any information relating to the contract or the Council any information of whatever nature which is not in the public domain. The contractor’s obligations under this Condition shall survive the expiry or termination of the Contract for whatever reason.

**10. INTELLECTUAL PROPERTY RIGHTS**

10.1 Unless otherwise agreed in writing between the parties, all copyright, design rights and other intellectual property rights in any work which is developed in the course of the provision of the Services shall be vested in the Council and the Contractor shall do all things and render all such assistance as may be reasonably required by the Council in order to vest such rights in the Council.

10.2 Any plans, drawings, documents, handbooks, codes of practice or other information (the "Documents") provided by the Council pursuant to the Contract shall at all times remain its property and the Contractor shall not use, reproduce, disseminate, adapt, transmit in any form or by any means the Documents or any part thereof or permit the same to be so used, reproduced, disseminated, adapted or transmitted as aforesaid or published other than for the purposes of carrying out its obligations under the Contract.

10.3 The Contractor hereby grants to the Council an irrevocable, non-exclusive, royalty-free licence to use for any purpose in connection with the Services all the Contractor’s intellectual property which the Contractor has used or supplied in connection with the Services, provided that the Contractor shall have no liability for any use of such intellectual property other than for the purposes for which it is intended. The Council may grant sub-licences out of the said licence.

10.4 The Contractor shall indemnify the Council against all loss, damage, costs and expenses for which the Council is or becomes liable as a result of any infringement or alleged infringement by the Contractor of any third party’s intellectual property rights.

**11 Indemnity**

* + 1. The Contractor will indemnify the Council to the extent of its Public Liability insurance cover and its Employer Liability insurance cover in respect of all damage or injury to any person or to any property and against all actions, suits, claims, demands, costs, charges or expenses awarded against or incurred by the Council under common law and statute, whether criminal or civil, (including the costs of transport, labour, administration and legal costs on an indemnity basis to the Council) arising from:

11.1.1 any act, neglect or default on the part of the Contractor, its employees or agents;

11.1.2 breaches in respect of any matter arising from the provision of the Services resulting in any successful claim brought under common law and statute by any third party.

11.2 Without prejudice to any other provision of this Contract, the Contractor will indemnify the Council to the extent of its Public Liability insurance cover and its Employer Liability insurance cover against any claims made against it under common law and statute as a result of any failure by the Contractor to comply with any statutory provision to be observed or performed in connection with the provision of the Services.

11.3 The Contractor’s liability to indemnify the Council arising under this clause 11 will be without prejudice to any other right or remedy of the Council arising under this Contract.

**12 Insurance**

12.1 The Contractor will throughout the Contract Term maintain with a reputable insurance company within the UK such policies of insurance (provided that such insurance is available in the market at commercially reasonable rates) as are necessary to cover any liability under common law and statute of the Contractor in respect of loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Contractor carrying out or failing to carry out its obligations under the Contract or for which it may become liable under common law and statute to the Council under clause 12, including:

12.1.1 employer’s liability insurance for each and every claim of not less than £10,000,000 (ten million pounds);

12.1.2 public liability insurance for each and every claim of not less than £5,000,000 (five million pounds);

1. 12.2 Upon request, the Contractor will provide the Council with details of the policies of insurance (by way of insurer’s certificate) effected in accordance with clause 12.1, so as to demonstrate that clause 12.1 is being complied with.
2. 12.3 The Contractor will immediately inform the Council of any failure or inability to maintain insurance in accordance with clause 12.1 and of any circumstances likely to render such insurance void or voidable in order that the Contractor and the Council can discuss the means of best protecting their respective positions in the absence of such insurance.
3. 12.4 Any increased or additional premiums required by insurers by reason of the Contractor’s own claims records or other acts or omissions particular to the Contractor will be deemed to be within commercially reasonable rates.

**13. Statutory rights**

13.1 Nothing in these conditions shall affect in any way the statutory rights of the Council under the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 or any subsequent amending or consolidating legislation.

* 1. A party who is not a party to this supply / service contract is not entitled to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 except where this Supply/Service Contract expressly provides otherwise.
  2. The contractor shall comply in all respects with the law and all applicable rules and regulations in all matters arising in the performance of or in connection with the Contract.

**14. Termination of Contract**

14.1 The Contract shall terminate automatically on the Contract Term

14.2 In the event of:

14.2.1 the passing by the Contractor of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Contractor or the dissolution of the Contractor; or

14.2.2 the making of an administration order in relation to the Contractor or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of, any of the Contractor’s assets; or

14.2.3 the Contractor making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally;

14.2.4 The Council may, without prejudice to any other power of termination or to any rights or remedies it may have, terminate the Contract forthwith by notice and the Contractor shall indemnify the Council against all costs, expenses and damages for which the Council becomes liable arising from such termination.

14.3 Without prejudice to the Council’s other rights and remedies, the Council may forthwith terminate the Contract by notice:

14.3.1 if the Contractor commits any breach of the Contract and fails to remedy such breach within 14 days of being given written notice to do so by the Council; or

14.3.2 if the Contractor fails to perform its obligation as a Reasonable and Prudent Operator under the Contract.

14.3.3 if there is a material Change in Law which undermines the purpose of this Agreement or makes it impossible for the Contractor to perform the Services as required under this Agreement or as a result of which continuing with the purchase of the Services as required under this Agreement would put the Client in breach of any of its duties at law or as required under any relevant license or permit..

**15. Disputes**

All disputes or questions between the Council and the Contractor arising out of or relating to the Contract which cannot be resolved by the parties shall, after written notice served by either party or the other, be referred to a single arbitrator agreed by the parties hereto or in default of agreement to be nominated by the President for the time being of the Chartered Institute of Arbitration in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force. In the event of the death of the arbitrator or unwillingness or inability to act, or in default of an agreement to a person to be appointed the dispute will be referred to an independent body in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof.

**16. NO WAIVER**

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this contract.

**17 Recovery of Sums Due**

If either party owes the other money under the Contract, then the party who is owed the money may set off any such sum against any money it subsequently owes to the other under the Contract.

**18. FORCE MAJEURE**

18.1 Notwithstanding anything contained in these terms and conditions neither the Council nor the Contractor shall be liable for any loss damage or expense suffered or incurred by one party if by reason of a Force Majeure event or any restriction or prohibition imposed by the Government or any duly authorised authority which could not reasonably have been prevented or avoided by the Council or the Contractors as the case may be, either

* 1. The Council is prevented from or delayed in accepting delivery of any goods or any part of a delivery or in paying for the same or any part of a delivery at the due time or
  2. The Contractor is prevented from or delayed in the supply of any goods ordered by the Council.

**19 Corrupt Gifts and Fraud**

19.1 As soon as either party becomes aware of or suspects the commission of any Prohibited Act in respect of the provision of the Services it will notify the other party.

19.2 In circumstances where a person employed by the Contractor is reasonably suspected of having committed a Prohibited Act the Contractor’s Representative will provide to the Council such information as is reasonable to satisfy the Authorised Officer that appropriate action has been taken to safeguard the Service Users or the Council.

**20 Accrued Rights and Remedies**

The termination of the Contract will not prejudice or affect any claim, right, action or remedy that will have accrued or will thereafter accrue to either party.

**21 Rights and Duties Reserved**

All rights, duties and powers which the Council has as a local Council or which the Council’s officers have as local Council officers are expressly reserved.

**22** **Survival of Terms**

The terms of the Contract will (except in respect of any obligations fully performed prior to or at the completion of the Services) continue in force and effect after the completion of the Services by the Service Provider.

**23. Governing Law**

This Contract shall be governed by and construed in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

**24 ENTIRE AGREEMENT**

This contract contains the whole agreement between the parties and neither party has relied upon any oral or written representations made to it by the other or the others employees, representatives or agents and this Contract supersedes any prior agreement between the parties.

1. **AUTHORITY TO CONTRACT**

Each of the parties warrants its power to enter into this Agreement and that it has obtained the necessary approvals to do so.

**26. EQUALITIES**

26.1 The Contractor shall not unlawfully discriminate either directly or indirectly protected groups, namely those people with the protected characteristics as set out in the Equality Act 2010, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

26.2 The Contractor shall take all reasonable steps to secure the observance of clause 26.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Agreement.

26.3 The Contractor shall take all reasonable steps to ensure compliance with the Equality Act 2010 by all servants, employees or agents of the Service Provider and all suppliers and sub-contractors employed in the execution of the Agreement.

**27. HEALTH AND SAFETY**

27.1 The Contractor shall promptly notify the Client of any health and safety hazards, which may arise in connection with the performance of the Agreement. The Client shall promptly notify the Contractor of any health and safety hazards that may exist or arise at the Site and that may affect the Contractor in the performance of the Agreement.

27.2 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Site in the performance of the Agreement.

27.3 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Client on request.

**IN WITNESS** of which this Agreement has been duly executed by the parties.

**SIGNED** for and on behalf of the **Council SIGNED** for and on behalf of the **Contractor**

Signature.................................................... Signature....................................................

Name: ....................................................... Name..........................................................

Position: ................................................... Position.....................................................

Date........................................................... Date............................................................