

DATED

2015

CORBY BOROUGH COUNCIL

and

[]

SERVICE CONTRACT

RELATING TO

LICENSED VEHICLE INSPECTION

engaged in the performance of the Supplier's obligations under the Contract;

'Terms' means these terms and conditions of Contract;

2.2. Interpretation

References to clauses and schedules are to the clauses and schedules of this Contract.

2.2.1. Clause and schedule headings are for convenience only and do not affect the interpretation of this Contract;

2.2.2. Words in the singular shall include the plural and vice versa;

2.2.3. A person includes a natural person, corporate and unincorporated body (whether or not having a separate legal personality);

2.2.4. A reference to any Act of Parliament, or to any Order, Regulations, Statutory Instrument, or the like, is a reference to it as it is in force for the time being taking into account any amendment, extension or re-enactment of the same and includes any subordinate legislation made under it;

2.2.5. Reference to a Party's consent or approval being required is to a consent or approval in writing which must be obtained before the relevant action is taken or event occurs;

2.2.6. In the case of conflict or ambiguity between the Terms and the Schedule, the Terms will take precedence.

3. Commencement and Duration

3.1 The Supplier shall supply the Services to the Customer from the Commencement Date and shall continue to supply the Services up until [2 YEAR CONTRACT] or until this Contract is terminated in accordance with the Terms or otherwise lawfully terminated or extended in accordance with Clause 3.2.

3.2 The Customer has the sole discretion to determine whether to extend the Contract Period for up to a further 12 months on three months' notice and the extension must be agreed in writing and formally signed by the Parties.

4. The Contract Manager

4.1 The Services are to be carried out under the direction of the Contract Manager or a nominated representative.

4.2 The Contract Administrator shall have full authority to act on behalf of the Customer for all purposes connected with the Contract.

- 4.3 The Customer shall notify the Supplier in writing of the replacement of the Contract Manager, or if any person ceases to be the Contract Manager for this Contract.

5. Supplier's Obligations

- 5.1 In supplying the Services, the Supplier shall:
- 5.1.1 perform the Services with all reasonable skill, care and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
 - 5.1.2 act at all times in good faith and in the best interests of the Customer;
 - 5.1.3 perform the Service in a conscientious and timely manner;
 - 5.1.4 co-operate with the Customer on all matters relating to the Service;
 - 5.1.5 ensure the accuracy of all documentation and information supplied to the Customer in connection with the Services, and pay the Customer any extra costs which may be incurred as a result of any discrepancies, errors or omissions therein;
 - 5.1.6 ensure that the Services are provided by Staff who are suitably skilled, experienced, qualified and competent members of the Supplier's Staff under proper management and supervision;
 - 5.1.7 respond promptly to all complaints, oversights and omissions and shall immediately make good any default at its own expense;
 - 5.1.8 perform the Services in accordance with the Customer's environmental policy;
 - 5.1.09 allow the Customer to inspect and examine any work being performed as part of the Services at all reasonable times;
 - 5.1.10 obtain the Customer's approval before introducing new methods or systems which may affect the Service;
 - 5.1.11 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 5.1.12 comply with all applicable laws; and
 - 5.1.13 provide all equipment, tools and vehicles and other items as are required to provide the Services.

- 5.2 The Supplier warrants to the Customer that, to the extent that any goods, equipment or consumables are provided as part of the Services they will:
- 5.2.1 be free from defects (manifest or latent) in design, material and workmanship and remain so for 12 months after installation;
 - 5.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health;
 - 5.2.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling, delivery and installation of the goods, equipment or consumables;
 - 5.2.4 conform with the specifications, drawings, descriptions given in quotations or tender, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
 - 5.2.5 be free from design defects;
 - 5.2.6 be fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by the Customer of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause.
- 5.3 This Contract shall not negate or diminish any duty or obligation which the Supplier owes to the Customer in equity, at common law, or pursuant to statute or European Law.
- 5.4 On completion of this Contract, howsoever arising, the Supplier shall cooperate with the Customer, free of charge, to ensure an effective handover of the Service.

6. Audit

- 6.1 The Supplier shall keep and maintain full and accurate records of the Contract, including payments and expenditure, for at least 6 years from the date the Contract is completed.
- 6.2 The Supplier shall allow the Customer or its representatives access to these records upon reasonable notice.

7. Customer's Obligations

7.1 The Customer shall co-operate with the Supplier and provide all information known by or available to the Customer, which may aid the Supplier in performing the Services.

8. Communication

8.1 The Supplier shall ensure that the Contract Manager is kept informed of:

8.1.1 the names and status of any person responsible for the overall performance of the Contract;

8.1.2 who to approach in the event of any problems with the Services;

8.1.3 all appropriate information as to the issues raised and the progress of any matter undertaken in performance of the Services.

9. Performance Review

9.1 The Supplier shall ensure that the Supplier's Representative is available to meet the Contract Manager, if so required, at no additional cost, to enable the Customer to monitor and review the performance of the Supplier in accordance with the Schedule.

9.2 The Supplier shall bring to this meeting such Management Information as may be reasonably requested by the Contract Manager.

9.3 The Supplier shall comply with any reasonable requests made by the Contract Manager for improvements in methods of service delivery.

10. Advertising and Media Relations

10.1 The Supplier shall not advertise or make any contact with the media about the fact that it is or could be providing Services to the Customer under this Contract other than with the prior written permission of the Customer.

11. Indemnity and Insurance

11.1 The Supplier shall indemnify and keep indemnified the Customer against all loss, damages, costs, charges and expenses at any time incurred or suffered by the Customer and arising directly or indirectly from any breach by the Supplier of this Contract or any of its obligations to the Customer or from any negligence, negligent act, negligent omission, default or breach of duty on the part of the Supplier, its employees, servants or agents.

11.2 The Supplier shall effect and shall maintain at all times during the Contract Period and for twelve months thereafter (or such longer period as, depending on the basis of claims covered by the insurance, will effect cover for the limitation period applicable to any relevant claim):

- 11.2.1 Public liability insurance in the minimum sum of five million pounds (£5,000,000.00) in respect of one incident and the number of incidents covered shall be unlimited;
 - 11.2.2 Employers liability insurance which complies with the Employers liability (Compulsory Insurance Act 1969 of not less than ten million pounds (£10,000,000.00) in respect of one incident and the number of incidents covered shall be unlimited;
 - 11.2.3 product liability insurance in an amount not less than five million pounds (£5,000,000.00) in respect of one incident and the number of incidents covered shall be unlimited;
- 11.3 The Supplier shall produce on demand to the Customer the policy or policies of insurance, the schedules to such insurances and evidence of the payment of the last premium in respect thereof.
- 11.4 The Supplier shall not do anything or refrain from doing or omit to doing anything, which might render any of the foregoing insurance policies void or voidable.

12. Use of the Customer's Premises and Facilities

- 12.1 The Supplier shall not, without the express written permission of the Contract Manager, use any premises of the Customer to perform either on its own or on behalf of any person other than the Customer any work other than provided for in the Contract.

13. Price and Payments

- 13.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Supplier in accordance with the Schedule.
- 13.2 The Supplier will invoice the Customer on a monthly basis for the Services provided together with any supporting documents necessary to support the invoice.
- 13.3 Where the Supplier submits an invoice to the Customer, the Customer will consider and verify that invoice in a timely fashion.
- 13.4 The Customer shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Customer has determined that the invoice is valid and undisputed.
- 13.5 Where the Customer fails to comply with Clause 13.3 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 13.4 after a reasonable time has passed.

- 13.6 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- a) provisions having the same effect as Clauses 13.3 – 13.5 of this Contract; and
 - b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Clauses 13.3 – 13.6 of this Contract.
 - c) In Clause 13.6, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.
- 13.7 Each Party may without limiting any other rights or remedies it may have, set off any amounts owed to it by the other Party against any amounts payable by it to the other Party.

14. Value Added Tax

The Customer shall pay to the Supplier such Value Added Tax as may properly be chargeable by the Supplier in connection with the provision of the Service. The Supplier shall issue a tax invoice in respect thereof.

15. Confidentiality

The Supplier shall keep in strict confidence all information disclosed to it by the Customer under the Terms of this Contract and shall not disclose any confidential information to any third party.

16. Not Used

17. Data Protection

- 17.1 Where the Supplier has access to personal information about people, it shall ensure that in providing the Service the provisions of the Data Protection Act 1998 (as amended or supplemented from time to time) are observed as well as the Customer's data protection requirements as notified to the Supplier.
- 17.2 The Supplier acknowledges that the Customer is subject to the requirements of the Data Protection Act 1998 and shall assist and co-operate with the Customer to enable the Customer to comply with the information disclosure requirements.

18. Freedom of Information

- 18.1 The Supplier and representatives shall comply at all times with the requirements of any scheme published by the Customer under the Freedom of Information Act 2000.
- 18.2 The Supplier acknowledges that the Customer is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and cooperate with the Customer to enable the Customer to comply with these information disclosure requirements.

19. The Contracts (Rights of Third Parties) Act 1999

No person who is not a party to this Contract shall have any rights to enforce the Terms of this Contract and the terms of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

20. Anti Discrimination and Human Rights

- 20.1 The Supplier shall:
- 20.1.1 not unlawfully discriminate within the meaning scope of any law, enactment, order, or regulation relating to discrimination (whether in age, culture, race, gender, religion, disability, sexual orientation or otherwise) in employment;
 - 20.1.2 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract;
 - 20.1.3 ensure that its Staff comply with the provisions of Clause 20.1.

21. Anti Bribery

- 21.1 The Supplier:
- 21.1.1 shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
 - 21.1.2 warrants that it is not aware of any financial or other advantage being given to any person working for, or engaged by the Supplier, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Contract;
 - 21.1.3 the Supplier shall have an anti bribery policy (which shall be disclosed to the Customer) to prevent the Suppliers Staff from committing a prohibited act and shall enforce it where appropriate.

22. Fraud

The Supplier shall safeguard the Customer against fraud and any other criminal activity and shall notify the Customer immediately if it has any reason to suspect that fraud or crime has occurred or is occurring or is likely to occur in connection with the Contract and in the delivery of the Services.

23. Termination

- 23.1 This Contract shall terminate automatically at the expiry of the Contract Period.
- 23.2 Either Party may terminate this Contract by giving the other Party three months written notice.
- 23.3 Without prejudice to any other rights or remedies which the Parties may have the Customer may terminate this Contract immediately if the Supplier:
 - 23.3.1 made a material or fundamental misrepresentation to the Customer during the tender process;
 - 23.3.2 commits a material breach of its obligations under the Contract;
 - 23.3.3 fails to perform a substantial part of the Services for a period of at least 1 month;
 - 23.3.4 fails to proceed with the Services with due diligence;
 - 23.3.5 persistently commits minor breaches of the Contract;
 - 23.3.6 sublets any part of the Contract without the Customer's approval;
 - 23.3.7 becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangements for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;
 - 23.3.8 has an application made under the Insolvency Act 1986 to the court for the appointment of an administrative receiver;
 - 23.3.9 has a winding up order made, or a resolution for voluntary winding up passed;
 - 23.3.10 has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;
 - 23.3.11 has an application made to the court, or an order made against him for the appointment of an administrator;

23.3.12 has possession taken, by or on behalf of the holders of any debenture secured by a floating charge of any property comprised in or subject to the floating charge.

24. Remedies

24.1 If any of the Services are not provided in accordance with, or the Supplier fails to comply with any Terms of this Contract, the Customer shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

24.1.1 to rescind this Contract;

24.1.2 to refuse to accept the provision of any further Services by the Supplier, and to require the immediate repayment by the Supplier of all sums previously paid by the Customer to the Supplier under this Contract; or

24.1.3 to require the Supplier, without charge to the Customer, to carry out such additional work as is necessary to correct the Suppliers failure; and

in any case, to claim such damages as it may have sustained in connection with the Suppliers breach (or breaches) of this Contract not otherwise covered by the provisions of this Clause 24.

25. Force Majeure

Neither Party shall be responsible to the other for any delay in performance or non performance of the Contract due to any causes beyond the reasonable control of the Parties, but the affected Party shall promptly upon the occurrence of any such cause, inform the other Party in writing stating that such cause has delayed or prevented its performance under the Contract, and thereafter the Parties will take all action within their powers to comply with the Terms of this Contract as fully and promptly as possible.

26. Dispute Resolution Procedure

26.1 If any dispute arises in connection with this Contract, the Contract Manager and the Supplier's Representative shall meet in good faith to resolve the issue.

26.2 If the dispute is not resolved at that meeting, the Parties will refer the matter to a single arbitrator to be agreed between the Parties.

26.3 If the matter has not been resolved within 42 days from the initiation of arbitration, the matter shall be referred to, and finally resolved by the courts.

26.4 The Parties shall share the costs of arbitration equally, irrespective of fault.

27. Health and Safety

27.1 The Supplier shall:

27.1.1 be responsible for the health and safety of all employees, staff and volunteers and any other person involved in the performance of this Contract and shall ensure that its Staff comply, with the requirements of the Health and Safety at Work etc Act 1974 and any other health and safety rules and regulations;

27.1.2 adopt safe methods of working in order to protect the health and safety of its own employees, and where applicable, the employees of the Customer and all other persons, including members of the public;

27.1.3 notify the Customer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services;

27.1.4 review its safety policy and safe working procedures as often as may be necessary, and present any proposed amendments to the Contract Manager for approval.

28. Assignment and Sub-Contracting

28.1 The Supplier shall not:

28.1.1 assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without the prior written consent of the Contract Manager; or

28.1.2 sub-contract the Services or any part thereof to any person without the previous written consent of the Customer, which consent (if given) shall not relieve the Supplier from any liability or obligation under the Contract and the Supplier shall be responsible for the acts, defaults or neglect of any sub-contractor or its agents, servants or employees in all respects as if they were the acts, defaults or neglect of the Supplier or its agents, servants or employees, notwithstanding that the Customer may require as a term of giving any consent to sub-contract a direct warranty and undertaking from the sub-contractor concerning the provision of the Service and compliance with the Contract in all respects; or

28.1.3 create any security over the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without the previous written consent of the Customer.

28.1.4 Without prejudice to the provisions of Clause 28, the Supplier shall maintain full control over and adequate liaison with any sub-contractor in order to ensure compliance with the Contract, and in addition, full control and adequate liaison as between sub-contractors. The Supplier shall submit to the Customer not less than thirty (30) days before the Commencement Date a written summary of the system which the Supplier proposes to put in place to maintain such control and liaison.

29. Observance of Statutory Requirements

The Supplier shall comply with all statutory and all other provisions to be observed and performed in connection with the Service provided under the Contract and shall indemnify the Customer accordingly.

30. Recovery of sums due to the Customer

In the event of any failure by either Party to pay to the other any sum due under the Contract within seven (7) days after a written demand for payment thereof having properly been made such Party shall further pay to the other interest on any such sum at the rate of one (1) percentage point above the base lending rate from time to time of the Bank of England. Such interest shall run from day to day and shall accrue before and after any judgement and shall be compounded monthly on the amount overdue until payment thereof.

31. Legal Costs of the Contract

Each Party shall bear and be responsible for its own legal and other fees and costs associated with the preparation of the Contract.

32. Notices

Any notice about the Contract may be sent by hand or by ordinary, registered or recorded delivery post or transmitted by facsimile transmission or other means of telecommunication resulting in the receipt of written communication in permanent form and if so sent or transmitted to the address of the party shown in the tender, or to such other address as the party has notified the other, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

33. Waiver

Failure by the Customer at any time to enforce the provisions of the Contract or to require performance by the Supplier of any of the provisions of the Contract shall not be construed as permanent waiver or revision of any such provision and shall not affect the validity of the Contract or any part thereof or the right of the Customer to enforce any provision in accordance with its Terms and no waiver or any default in

the performance of the provisions of the Contract shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character.

34. Severance

If any court or competent authority finds that any provision of this Contract is invalid, illegal or unenforceable, that provision shall be deleted, and this shall not affect the validity and enforceability of the remainder of the Contract.

35. Supplier's Status

Nothing in this Contract is intended to, or shall operate to create a partnership, or contract of employment between the Parties, or to authorise either Party to act as an agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

36. Purchase Outside the Contract

The Customer shall have the right to employ a person other than the Supplier to provide services of the same type as is contemplated by the Contract if it shall in its absolute discretion think fit to do so.

37. Value for Money

Throughout the Contract Period the Parties shall, acting reasonably, work together to ensure that the Contract and the Supplier's performance of the Service represents value for money and best value generally and provides continuous improvement for the benefit of the Customer.

38. Entire Agreement

- 38.1 This Contract and any documents referred to in it or annexed to it constitutes the entire agreement between the Parties and supersedes all prior negotiations, representations and undertakings, whether written or oral relating to the subject matter of this Contract.
- 38.2 Nothing in this Clause shall limit or exclude any liability on the part of the Supplier for fraudulent misrepresentation.

39. Governing Law and Jurisdiction

This Contract shall be governed by and construed in accordance with the laws of England and Wales.

IN WITNESS whereof this Contract has been signed the Parties hereto;

The CUSTOMER)

.....
Authroised Signatory

.....
Authorised Signatory

The SUPPLIER)

.....
Director

.....
Director

SCHEDULE

**INSERT: CUSTOMERS REQUIREMENTS/ SERVICES AND THE FEE
ARRANGEMENT**