

Dated

2015

THE NORTH LONDON WASTE AUTHORITY

- AND -

**CONTRACT FOR
FINANCIAL CONSULTANCY SERVICES**

North London Waste Authority
Camden Town Hall
Judd Street
London
WC1H 9JE

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personal data and sensitive personal data within the meaning of the Data Protection Act 1998. Confidential Information shall not include information which:

- was public knowledge at the time of disclosure (otherwise than by breach of this Condition (Confidential Information));
- was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- is independently developed without access to Confidential Information;

"Consultant" is the above named person, firm or company whose tender is accepted by NLWA and accordingly enters into this Contract with NLWA to execute and complete the Service for NLWA as is provided for in the Contract and shall where the context so requires include its personal representatives, successors and permitted assignees;

"Consultant's Representative" means the person identified in Schedule 5 (Staff) or other person nominated from time to time and notified in writing to NLWA;

"Contract" means this agreement entered into between NLWA and the Consultant consisting of the Conditions and the Schedules;

"Contract Period" means the term defined in [clause 2.1](#);

"Default" means any failure to fulfil an obligation or promise or to perform specified acts under the Contract;

"Force Majeure" means any circumstance arising from or attributable to acts, events, omissions or accidents beyond its reasonable control, which renders the continued performance of any obligations under the Contract illegal or impossible, including, but not limited to

- (a) act of God, fire, flood, earthquake, windstorm or other natural disaster;
- (b) epidemic or pandemic
- (c) riot, civil disturbance, industrial dispute (not directly involving either Party), war, sabotage or terrorist attack;
- (d) nuclear, chemical or biological contamination
- (e) compliance with any law or governmental order, rule, regulation or any action taken by the government or public authority;
- (f) loss at sea;
- (g) extreme adverse weather conditions;
- (h) interruption or failure of utility Services;
- (i) non-performance by suppliers or sub-contractors, provided that such suppliers and sub-contractors are themselves impeded by Force Majeure.

"Intellectual Property Rights" means patents, inventions, trade marks, service marks, logos, design rights (whether capable of being registered 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 capable of being

registered or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“NLWA’s Representative” means the person nominated from time to time and notified in writing to the Consultant;

“Schedules” means the Schedules (if any) annexed hereto and forming part of the Contract;

“Services” means the services required and the requirements of NLWA as described in the Schedule 1 (Scope of Services);

“Staff” means all persons employed by the Consultant to perform the Services together with the Consultant’s servants, agents and sub-consultants used in the performance of the Services;

“Working Days” means Monday to Friday excluding all public and bank holidays in England and Wales;

- 1.2. A reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, etc. as amended or re-enacted, from time to time.
- 1.3. The headings to these Conditions are for ease of reference only, and shall not affect the construction of the Contract.
- 1.4. All references to the masculine shall include the feminine, and all references to the singular shall include the plural and words importing individuals shall be treated as importing corporations and vice versa.
- 1.5. Where the Consultant is more than one person those persons shall be jointly and severally liable under the Contract.
- 1.6. Reference to employees, personnel, staff and managers of the Consultant shall include references to all persons engaged by the Consultant in the performance of the Services and shall (if the context so permits) include references to the personnel staff and managers of any sub-consultant or the Consultant.
- 1.7. In the event and to the extent only of any conflict between the Conditions and the Schedules, the Conditions shall prevail.

2. CONTRACT PERIOD

- 2.1. The Contract shall commence with effect from the Commencement Date and (subject to the Contract provisions for earlier termination at [clauses 21](#) and [22](#) or extension at [clause 2.2](#) it shall continue in force for a period of three (3) years.

Options to extend

- 2.2. NLWA may give notice to the Consultant at any time before the expiry of this Contract to extend the Contract Period upon the same terms for a further period of up to one (1) year on two (2) separate occasions.

3. CONSULTANT'S OBLIGATIONS

- 3.1. The Consultant shall provide the Services as defined in Schedule 1 (Scope of Services) using the relevant methodology or methodologies described in the Consultant's method statements at Schedule 2 (Method Statements), where relevant, and in compliance with the service standards as set out in Schedule 3 (Service Standards).
- 3.2. The Consultant shall provide the Services with all reasonable skill, care and diligence in accordance with any relevant professional standards and NLWA's Representative's reasonable written instructions and whether these requirements are met shall be determined by NLWA's Representative acting reasonably.
- 3.3. The Consultant shall use reasonable endeavours to meet deadlines for tasks as required by NLWA using the Task Form at Schedule 4 and shall meet times stated in a Task Form.
- 3.4. The Consultant shall promptly inform the Authorised Officer (and confirm in writing) if the Services, or any part of the Services, are not being, or may not be, performed, whether or not as the result of any act or omission of NLWA, giving details, reasons and likely duration of non performance. The provision of this information shall not relieve the Consultant from its contractual obligations.
- 3.5. If the Consultant requires any further instruction or information in connection with the provision of the Services the Consultant shall make a sufficiently detailed, and sufficiently timely, written request to the Authorised Officer specifying any critical date by which a response is needed, but otherwise giving the Authorised Officer reasonable time to respond.
- 3.6. The Consultant shall use its reasonable endeavours to ensure that the Staff are available at all times on reasonable notice to provide such assistance or information as NLWA may require.
- 3.7. If the Consultant or its Staff is unable to provide the Services due to illness or injury, the Consultant shall advise NLWA of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in respect of any period during which the Services are not provided.
- 3.8. The Consultant shall at all times comply with all relevant NLWA's policies, standing orders and financial regulations, available on NLWA's website www.nlwa.gov.uk
- 3.9. Except as otherwise provided in the Contract the Consultant shall provide all Staff, equipment, materials, information, data and other things whatsoever required for the provision of the Services.

- 3.10. The Consultant shall co-operate and co-ordinate its activities with other consultants or sub-consultants engaged by NLWA as appropriate.
- 3.11. The Consultant shall ensure that neither the Consultant nor its Staff shall do any act or thing at any premises owned or occupied by NLWA other than the proper performance of the Services.

4. SERVICES AND TIMESHEETS

- 4.1. NLWA reserves the right to not purchase any Services; or any particular volume of Services during the Contract Period. NLWA reserves the right to acquire the same or similar services from any other entity during the Contract Period.
- 4.2. Where NLWA considers that it may or will require the performance of Services, it will set out its requirements in the form at Schedule 4 (Task Form) and send this to the Consultant.
- 4.3. The Consultant shall review and agree the Task Form and return a copy to NLWA for its records. Invoices may only be submitted to NLWA once the relevant Task Form has been agreed and returned to NLWA.
- 4.4. The Consultant shall provide NLWA with weekly timesheets every following Monday (or on Tuesday where the Monday is not a Working Day). The timesheets shall show:
- 4.4.1. the description of the work and Services undertaken over the past five (5) Working Days;
 - 4.4.2. the applicable dates and times (in hours: minutes) of working by Staff;
 - 4.4.3. the relevant Staff names, their grade(s) and daily rates in accordance with Schedule 5 (Staff) and Schedule 6 (Agreed Rates);
 - 4.4.4. the reference for the relevant Task Form; and
 - 4.4.5. any other relevant information to the timesheets which NLWA shall reasonably require.

5. AGENCY

- 5.1. At all times during the Contract Period the Consultant shall be an independent Consultant and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

6. THE CONSULTANT'S STAFF

- 6.1. The Consultant shall make available for the purposes of the Services any individuals named in its tender and the person (if applicable) so named as the Consultant's Representative as set out in Schedule 5 (Staff). The Consultant must notify NLWA of other individuals, not named in its tender before making such individuals available for the purposes of the Services.

- 6.2. The Consultant shall employ sufficient Staff for the provision of the Services and ensure that the Staff are properly and suitably qualified, competent, skilled, honest and experienced and shall at all times exercise reasonable care in the execution of their duties. The Consultant shall ensure that Staff are properly and sufficiently instructed and supervised with regard to the provision of the Services.
- 6.3. The Authorised Officer shall have the power upon written notice to require the Consultant, but not unreasonably or vexatiously, to remove from the provision of the Services any Staff of the Consultant including the Consultant's Representative. The Consultant shall forthwith remove such person/s from the provision of the Services and as soon as reasonably practicable shall provide a replacement. The Consultant shall fully and promptly indemnify NLWA against any claim made by such person.
- 6.4. The Consultant shall take all reasonable steps to avoid changes to Staff involved in provision of the Services and shall first discuss any changes in Staff with NLWA.

7. SECURITY

- 7.1. NLWA shall by prior arrangement provide such access to NLWA premises as the Consultant may reasonably require to fulfil its obligations under the Contract.
- 7.2. The Consultant shall comply with all health and safety and security requirements of NLWA while at NLWA premises including providing identity details, adhering to site rules and submitting to security checks on request and complying with NLWA requirements relating to security passes, including returning them on exiting NLWA premises.
- 7.3. NLWA reserves the right to refuse admission to or require the removal of any person from NLWA premises who is considered unacceptable for any reason.
- 7.4. Unless caused by an act or omission of NLWA, the Consultant shall be responsible for theft, loss or damage to:
- 7.4.1. own property, plant, equipment, data or personal possessions brought onto NLWA premises;
 - 7.4.2. NLWA property, plant, equipment, or data used or within the care and control of the Consultant.

8. AGREED RATES AND PAYMENT

- 8.1. The Consultant must at its own expense submit all invoices and credit notes electronically by email and in hardcopy by post and through any other reasonable means requested by NLWA.
- 8.2. The Consultant shall submit invoices monthly, and together with such records as NLWA may reasonably require including, but not limited to, time sheets, expense receipts, invoices paid or any other documents which would enable NLWA to verify the information and the amounts referred to in that invoice.

- 8.3. The Consultant shall provide the name and address of its bank, the account name and number, the bank sort code and any other details, in whatever format NLWA may require.
- 8.4. Except where otherwise provided in the Contract, the amount payable to the Consultant for the performance of the Service shall be in accordance with the Agreed Rates at Schedule 6.
- 8.5. NLWA shall pay the Consultant within 30 days of the receipt of a valid invoice provided that NLWA is satisfied that the Service for which the invoice relates have been performed fully in accordance with the Contract. NLWA shall be entitled to challenge any invoice that it considers incorrect, which shall be communicated to the Consultant together with NLWA's grounds for thinking this. The Parties shall then agree the correct charges and NLWA shall make payment within 30 days of agreement being reached.
- 8.6. The Agreed Rates shall be exclusive of VAT and VAT will be payable at the prevailing rate.
- 8.7. The Agreed Rates will be reviewed each year and, will be varied each year with effect from the 1st April following the first anniversary of the Commencement Date by the change in the Retail Price Index.

9. MEASUREMENT OF PERFORMANCE

- 9.1. Throughout the Contract Period the performance of the Consultant in relation to any Services shall be monitored by NLWA.
- 9.2. The Consultant shall keep a written record of any performance monitoring carried out by NLWA and shall afford NLWA and/or any internal auditor or external auditor appointed on its behalf access on reasonable notice and during normal working hours to such records and accounts as may be required from time to time.
- 9.3. The Consultant will provide management information to NLWA on an ad hoc basis as requested by NLWA. The information to be provided to NLWA will be in a format prescribed by NLWA and may include but not be limited to the following:
- 9.3.1. description of all Services on which the Consultant is currently working including details of work in progress and expected completion date(s);
 - 9.3.2. details of the Consultant's personnel working on current Services; and
 - 9.3.3. a comparison of activities against agreed milestones and deliverable tasks.
- 9.4. The Consultant will comply with all evaluation and feedback procedures discussed and agreed with NLWA Representative.
- 9.5. Either Party may upon reasonable notice, call performance monitoring, management or customer care meetings. These shall be attended by the Consultant (at no cost to NLWA), NLWA's Representative and any other person NLWA wishes to attend or NLWA agrees may attend.

10. CONTINUOUS IMPROVEMENT AND CO-OPERATION

- 10.1. The Consultant shall, throughout the Contract Period look for and seek to achieve, in conjunction with other consultants and others involved in the delivery of Services with which the Consultant is involved, continuous improvement in the quality and value for money of Services.
- 10.2. The Consultant shall (at the request of NLWA) participate in meetings, including but not limited to, with NLWA and/or with other consultants engaged by NLWA or other customers in relation to the Services.

11. HEALTH AND SAFETY

- 11.1. The Consultant shall comply with:
- 11.1.1. all current relevant health, safety, fire and environmental legislation and official codes of practice and guidance including but not limited to the provisions of the Health and Safety at Work etc Act 1974, Health Act 2006 and the Smoke-free (Premises and Enforcement) Regulations 2006;
 - 11.1.2. all NLWA health, safety, fire and environmental requirements, codes of practice and guidance as notified in writing by NLWA;
 - 11.1.3. all requirements of the Contract in relation to health, fire, safety and environmental matters.
- 11.2. The Consultant shall upon request provide a copy of its policies in relation to health, safety, fire and environmental issues.
- 11.3. The Consultant shall promptly notify NLWA of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Consultant shall notify NLWA immediately in the event of any incident occurring where that incident causes any personal injury or any damage to property which could give rise to personal injury.
- 11.4. The Consultant shall, so far as reasonably practicable and relevant to the provision of the Services, conserve energy, water and other resources, reduce waste and noise pollution and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 11.5. All written work in connection with the Contract shall (unless otherwise specified or agreed in writing) be produced on recycled paper printed on both sides unless single sided printed needed for specific documents.

12. EQUAL OPPORTUNITIES

- 12.1. As a manager, employer and provider for services and/or supplies, the Consultant shall do all it reasonably can to seek the elimination of all forms of discrimination in its employment practices, ensuring that in the management and provision of its services no person is discriminated against whether directly or indirectly or by way of victimisation or harassment in relation to sex, religion, race, disability, colour, nationality, ethnic or

national origins, marital status, maternity, paternity, gender reassignment, age, part time or temporary status and sexual orientation in accordance with an established single equality scheme (as amended from time to time). The Consultant shall provide a copy of its equal opportunities policy to NLWA upon request.

12.2. During the Term the Consultant shall and shall procure that its personnel comply with the provisions of the Equality Act 2010 together with any applicable anti-discrimination legislation and with NLWA's policies as may be amended from time to time.

12.3. The Consultant shall follow all relevant codes of good practice including those produced by the Equality and Human Rights Commission and its successors.

12.4. In the event of any judicial or other official finding of unlawful discrimination by the Consultant, the Consultant shall take all reasonable steps to prevent a repetition of the unlawful discrimination and shall provide details of those steps to NLWA upon request.

12.5. The Consultant shall provide such information as NLWA may reasonably request for the purpose of assessing the Consultant's compliance with this clause.

12.6. NLWA is a public authority for the purpose of the Human Rights Act 1998, and where the Consultant is providing services to service users on NLWA's behalf, the Consultant shall act compatibly with the European Convention rights set out in that Act, in all aspects of providing the Service.

12.7. The Consultant shall, at its own cost, carry out such Equalities Impact Assessments as are required by NLWA from time to time.

12.8. The Consultant shall take all reasonable steps to ensure that all servants, employees or agents of the Consultant and all sub-Consultants employed in the execution of the Contract do not unlawfully discriminate in accordance with this [clause 12](#).

12.9. The Consultant shall provide such information as NLWA may reasonably request for the purpose of assessing the Consultant's compliance with this [clause 12](#).

13. OBSERVANCE OF STATUTORY REQUIREMENTS

13.1. The Parties to this Contract shall each comply with all statutory obligations required to be observed and performed in connection with the Services and shall each indemnify the other for any direct losses or claims arising directly from the breach of this [clause 13](#).

14. INDEMNITY AND INSURANCE

14.1. Neither Party excludes or limits liability to the other Party for:

14.1.1. death or personal injury caused by its negligence; or

14.1.2. fraud; or

14.1.3. fraudulent misrepresentation; or

14.1.4. any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

- 14.2. Subject to [clauses 14.3](#) and [14.4](#), the Consultant shall indemnify NLWA and keep NLWA indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise directly out of, or in consequence of, the negligent supply, or the late or purported supply, of the Services or the performance or non-performance by the Consultant of its obligations under the Contract or the presence of the Consultant or any Staff on the premises, 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 Consultant, or any other loss which is caused directly by any negligent act or omission of the Consultant.
- 14.3. The Consultant shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of NLWA or by breach by NLWA of its obligations under the Contract.
- 14.4. The Consultant shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Consultant.
- 14.5. The Consultant shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Consultant, arising out of the Consultant's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Consultant. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- 14.6. The Consultant shall hold employer's liability insurance in respect of employees in accordance with any legal requirement from time to time in force.
- 14.7. The Consultant shall give NLWA on each anniversary of the Commencement Date copies of all insurance certificates referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 14.8. If, for whatever reason, the Consultant fails to give effect to and maintain the insurances required by the provisions of the Contract NLWA may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Consultant.
- 14.9. The Consultant's liability under [clause 14.2](#) above shall not exceed £1,000,000 (one million pounds) for each individual claim or in aggregate.

Professional Indemnity:

- 14.10. The Consultant shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all Staff involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Consultant shall ensure professional indemnity insurance held by the

Consultant and by any Staff involved in the supply of the Services has a limit of indemnity of not less than £1,000,000 (one million pounds) for each individual claim or in aggregate. Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of the Contract.

15. ASSIGNMENT AND SUB-CONTRACTING

15.1. NLWA shall be entitled to assign the benefit of the Contract or any part of it and shall give written notice of any assignment to the Consultant.

15.2. The Consultant shall not sub-contract or transfer, assign, charge or otherwise dispose of the Contract or any part of it without the previous written consent of NLWA.

15.3. The Consultant shall ensure that any sub-consultant complies with the provisions of the Contract save to the extent that they are completely inapplicable. Any sub-contract shall not relieve the Consultant of its obligations under the Contract.

15.4. The Consultant shall include a term in the Contract with the sub-Consultant that payment to the sub-Consultant shall be made within thirty (30) days of receipt of a valid invoice.

16. SUFFICIENCY OF INFORMATION

16.1. The Consultant is deemed to have satisfied itself as to the nature and extent of the Services to be provided and shall be deemed to be satisfied as to the accuracy and sufficiency of the rates and prices stated by the Consultant in its tender which shall (except insofar as is otherwise expressly set out in the Contract) cover all the Consultant's obligations and costs under the Contract. The Consultant shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Consultant's tender.

17. AUDIT

17.1. For the purpose of conducting any audit investigation of the Contract, the Consultant shall throughout the Contract Period provide all facilities and allow full access to NLWA or its auditors to:

17.1.1. all offices and premises of the Consultant for the purpose of inspecting records and documents in the possession, custody or control of the Consultant in connection with the provision of the Services;

17.1.2. all technology, resources, systems and procedures used or proposed to be used in connection with the provision of the Services; and

17.1.3. interview the Consultant's Staff.

17.2. The Consultant shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including, but not limited to:

17.2.1. the Services provided under the Contract;

- 17.2.2. all expenditure reimbursed by NLWA; and
- 17.2.3. all payments made by NLWA.

17.3. The Consultant shall by a term in any sub-contract authorised by NLWA, secure a similar right of access for NLWA and its auditors for the purpose of conducting any audit investigation of the Contract.

17.4. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material default by the Consultant in which case the Consultant shall reimburse NLWA for all NLWA's reasonable costs incurred in the course of the audit.

18. INTELLECTUAL PROPERTY RIGHTS

18.1. Subject to [clause 18.2](#), NLWA shall be entitled to all Intellectual Property Rights in the materials developed, originated, written or prepared by the Consultant or any Staff of the Consultant in connection with the Services (whether individually or jointly with NLWA ("the Materials")), which Intellectual Property Rights the Consultant by this Contract assigns to NLWA with full title guarantee.

18.2. The Intellectual Property Rights owned by or otherwise in the possession of either Party prior to the Commencement Date shall remain the absolute property of that party for the Contract period. The Consultant hereby grants to NLWA an irrevocable, non exclusive, assignable, and royalty free licence to use the Consultant's materials provided in relation to the Services with a right to grant sub-licences to such third parties as NLWA reasonably requires for the purposes of the Services. The licence will continue in force notwithstanding the expiry or termination of the Contract. For the avoidance of doubt the Consultant shall retain ownership of its own work papers.

18.3. At the request of NLWA the Consultant shall do all such things and sign all documents or instruments reasonably necessary in NLWA's opinion to enable NLWA to obtain, defend and enforce its Intellectual Property Rights in the Materials.

18.4. The Consultant warrants that the Materials will (so far as they do not comprise material originating from NLWA) be original works of authorship and the use or possession by NLWA will not subject NLWA to any claim for infringement of any proprietary rights of any third party.

18.5. The Consultant agrees to indemnify NLWA against any and all claims, liability, loss, damages, costs and expenses, which NLWA may incur or suffer as a result of a breach by the Consultant of the warranties set out in this clause.

18.6. The Consultant agrees that NLWA is entitled to all property, copyright, and other intellectual property rights in all Materials developed, originated, written or prepared or contributed by NLWA whether or not changed or developed by the Consultant.

19. FOIA, EIR, TRANSPARENCY AND DATA PROTECTION

19.1. NLWA is subject to the provisions of the Freedom of Information Act 2000 (“the FOIA”) and Environmental Information Regulations 2004 (“the EIR”) and the Transparency Code 2014 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations. As such the Consultant acknowledges that NLWA may be obliged to disclose information relating to this Contract and shall not be liable to the Consultant or any other person for any loss suffered as a result of a bona fide disclosure of information under the FOIA or EIR. More particularly:

19.1.1. upon receipt of a request for information NLWA shall, wherever reasonably practicable, consult with the Consultant and take into account its views on disclosure and the applicability of any exemptions;

19.1.2. the Consultant shall not respond directly to a request for information under FOIA or EIR and shall instead pass any request to NLWA within two (2) Working Days of receipt; and

19.1.3. the Consultant shall and shall procure that its sub-consultants shall:

19.1.3.1. provide NLWA with a copy of all information in its possession or power in a form that NLWA requires within five (5) Working Days of request at no cost to NLWA; and

19.1.3.2. provide all necessary assistance as reasonably requested by NLWA to respond to a request for information within the time for compliance set out in FOIA or EIR or any other similar legislation, regulations guidelines or codes of practice.

19.2. The Parties shall comply with the provisions of the Data Protection Act 1998 so far as applicable to this Contract and the Services and shall indemnify each other against all actions, costs, expenses claims, proceedings and demands which may be brought against the other Party for breach of statutory duty under this Act which arises from the use, disclosure or transfer of personal data by the other Party or its servants or agents.

20. CONFIDENTIALITY

20.1. NLWA reserves the general right to disclose information about this Contract, unless otherwise agreed in writing. NLWA shall use reasonable endeavours to ensure that information that is commercially sensitive to the Consultant is not disclosed to the Consultant’s competitors.

20.2. The Consultant shall not make any public statement or press release in connection with its provision of the Services without the prior written approval of NLWA.

20.3. The Consultant shall not advertise the fact that it is providing Services to NLWA under this Contract other than with the written permission of NLWA, except where it is contained in any submission to any other public body in response to an invitation to tender from that public body.

20.4. The Consultant shall not without written consent of the Authorised Officer during the Contract Period or for two (2) years afterwards make use of for its own purposes, or disclose to any person (except to its consultants or auditors or as may be required by

law), the Contract documents or any information contained in them or in any material provided to the Consultant by NLWA pursuant to the Contract or prepared by the Consultant pursuant to the Contract, all of which information shall be deemed to be confidential.

- 20.5. Neither the Consultant nor its Staff shall divulge or dispose of or part with possession, custody or control of any Confidential Information provided to the Consultant by NLWA pursuant to the Contract or prepared or obtained by the Consultant pursuant to the Contract, other than in accordance with the express written instructions of the Authorised Officer.
- 20.6. The Consultant shall take reasonable security precautions to protect all Confidential Information relating to the Contract and/or the Services and shall only disclose it to its Staff on a need-to-know basis and then only where should NLWA require it has written and executed agreements in place with those Staff to enable it to comply with this [clause 20](#).
- 20.7. The Consultant shall not and shall procure that its Staff do not use any of the Confidential Information received other than for the purposes of this Contract.
- 20.8. Confidential Information may be disclosed, reproduced, summarised or distributed only in relation to performance of the Services.
- 20.9. The Consultant shall immediately upon discovery notify NLWA of any unauthorised use or disclosure of Confidential Information and will co-operate in every reasonable way to help regain possession of the Confidential Information or to prevent its further unauthorised use.
- 20.10. The Consultant shall return or destroy all originals, copies, reproductions and summaries of Confidential Information as requested by NLWA save that the Consultant shall be entitled to retain one copy for its proper professional records, auditing and internal regulatory purposes.
- 20.11. The Consultant acknowledges that monetary damages may not be a sufficient remedy for unauthorised disclosure of Confidential Information and that NLWA, without waiving any other rights or remedies, may be entitled to injunctive or equitable relief in the courts.
- 20.12. The Consultant shall indemnify and keep indemnified NLWA against all actions, claims, demands, proceedings, damages, costs, losses, charges and expenses whatsoever in respect of any breach by the Consultant of this [clause 20](#).

21. FORCE MAJEURE

- 21.1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract other than a payment of money to the extent that such delay or failure is a result of Force Majeure, provided that each Party;

- 21.1.1. promptly notifies the other in writing of the nature and extent of the Force Majeure causing its failure or delay in performance; and
 - 21.1.2. uses all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure.
- 21.2. Parties shall bear their own costs arising as a consequence of the Force Majeure event.
- 21.3. Payment for the Services affected by a Force Majeure will be reduced or waived by a reasonable amount to be agreed between the Parties to reflect the extent and standard to which the affected Services are being provided. If a Force Majeure results in suspension of part of the Services NLWA will not be liable to pay for that part of the Services. If a Force Majeure results in suspension of all of the Services or in the Services being provided to a level of negligible value to NLWA, NLWA will not be liable to pay for any of the Services.
- 21.4. If the Force Majeure continues for more than thirty (30) days NLWA may terminate this Contract by giving thirty (30) days' written notice. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Contract occurring prior to such termination.

22. TERMINATION OF THE CONTRACT

22.1. NLWA may terminate the Contract immediately:

- 22.1.1. following any Default by the Consultant; or
- 22.1.2. following a Default which is notified to the Consultant by NLWA, and remedied by, the Consultant within a time frame agreed by the parties at no cost to NLWA); or
- 22.1.3. if the Consultant undergoes a change of control; or
- 22.1.4. in the event of the Consultant ceasing to carry on its business or becoming insolvent (within the meaning of Section 123 of the Insolvency Act 1986), or having a liquidator, trustee in bankruptcy, receiver, manager or administrative receiver appointed in respect of the Consultant's assets or (where the Consultant is a partnership) those of any partner of the firm; or any event similar to those listed above occurs under the law of any other jurisdiction; or
- 22.1.5. if the Consultant, its Staff or any person acting on the Consultant's behalf commits any offence under the Bribery Act 2010; or
- 22.1.6. if the Consultant or the Consultant Personnel commits any gross misconduct affecting NLWA; or
- 22.1.7. if the Consultant or Staff is, in the reasonable opinion of NLWA, negligent or incompetent in the performance of the Services; or
- 22.1.8. if the Consultant or Staff commits any fraud or dishonesty or acts in any manner which in the opinion of NLWA brings or is likely to bring the Consultant, Staff or NLWA into disrepute or is materially adverse to the interests of NLWA;
- 22.1.9. in the event that it is discovered that the Consultant has made any false statement or material misrepresentation in its tender (or any subsequent or related document); or

22.1.10. if the Consultant is found to be in breach of Paragraph 6 of the Revised Best Value Statutory Guidance March 2015 or equivalent provision.

22.2. NLWA may terminate the Contract at any time and for any reason by serving not less than 30 days' prior written notice on the Consultant.

22.3. Subject to clause [8.5](#), the Consultant may terminate the Contract for non payment of the agreed rates by serving not less than 15 days prior written notice on NLWA. The Contract shall not terminate if NLWA pays all outstanding sums before the expiry of the notice period.

22.4. The Consultant may terminate the Contract in the event of NLWA, or any successor to NLWA's functions, ceasing to carry on its business.

23. CONSEQUENCES OF TERMINATION OR EXPIRY

23.1. Within twenty (20) days of the date of termination or expiry of the Contract, the Consultant shall return to NLWA any data and Confidential Information belonging to NLWA in the Consultant's possession, power or control, either in its then current format or in a format nominated by NLWA (in which event NLWA will reimburse the Consultant's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by NLWA, save that it may keep one copy of any such data or information for its proper professional records, auditing and internal regulatory purposes or to comply with its obligations under the Contract.

23.2. Termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Contract prior to termination or expiry or which are expressly stated to survive termination or expiry.

24. TUPE

24.1. If the Transfer of Undertaking (Protection of Employment) Regulations 2006 ("TUPE") (as amended) apply on expiry or termination of the Contract for whatever reason, (such date being termed the "Transfer Date") in relation to those employees wholly or mainly engaged in the provision of the Services (as the case may be) immediately before the expiry or termination of the Contract (the "Transferring Employees"), the Consultant shall:

24.1.1. procure that all wages, salaries and other benefits of the Transferring Employees and other employees or former employees of the Consultant (who had been engaged in the provision of the Services) and all PAYE tax deductions and national insurance contributions relating thereto in respect of the employment of the Transferring Employees and such other employees or former employees of the Consultant up to the Transfer Date are satisfied;

24.1.2. without prejudice to [clause 24.1.1](#), indemnify NLWA, or any new consultant appointed by NLWA to provide the Services against all direct losses incurred by NLWA or new consultant resulting from any claim whatsoever by or on

behalf of any of the Transferring Employees or any other employee of the Consultant in respect of the period on or before the Transfer Date (whether any such claim, attributable to the period up to and on the Transfer Date, arises before, on or after the Transfer Date) including but not limited to any failure by the Consultant to comply with its or their obligations under Regulation 13 of TUPE save to the extent that any such failure to comply arises as a result of an act or omission of NLWA or the new consultant.

24.1.3. for the purposes of [clause 24.1.2](#) “direct losses” means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute contract or at common law.

24.2. The Contracts (Rights of Third Parties) Act 1999 is attended to apply to assign the benefit of the indemnity in [clause 24.1.1](#) to any new consultant appointed by NLWA to provide services equivalent to those provided by the Consultant under the Contract.

24.3. The Consultant agrees to provide NLWA with full and accurate employment information regarding the Transferring Employees and will not for a period of 12 months prior to termination or expiry of the Contract make any material changes in the numbers of Transferring Employees, their remuneration or other terms and conditions of employment.

25. DISPUTE RESOLUTION

25.1. If any dispute or problem arises in relation to the Contract it shall first be discussed at one of the meetings called in accordance with [clause 9.5](#). If no satisfactory resolution is reached at that meeting the dispute or difference shall be referred for determination to one sufficiently senior officer, partner or director of each Party with authority to resolve the dispute.

25.2. If the dispute or difference is not resolved as a result of the meetings referred to in [clause 25.1](#), either Party may propose to the other Party that structured negotiations be entered into with the assistance of the neutral adviser (“Neutral Adviser”).

25.3. If the Parties are unable to agree on a Neutral Adviser or the Neutral Adviser agreed on is unable to or unwilling to act, either Party may give to the other Party fourteen (14) days notice of that Party’s intention to apply to the Centre for Dispute Resolution (“CEDR”) to appoint a Neutral Adviser.

25.4. Within fourteen (14) days of the appointment of a Neutral Adviser the Parties shall meet with him or her in order to agree in good faith a programme for the exchange of information and the structure to be adopted for the negotiations. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

25.5. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

25.6. If the Parties accept the Neutral Adviser's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be put into writing and, once their duly authorised representatives sign it, shall be binding on the Parties.

25.7. Failing agreement, either Party may invite the Neutral Adviser to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings commenced without the prior written agreement of both Parties.

25.8. Failing agreement in the structured negotiations within thirty (40) days of the Neutral Adviser's appointment or such later time as agreed by both Parties in writing, then the dispute or difference between the Parties may be referred to an arbitrator to be agreed upon by the Parties or in default of such agreement to be nominated by the President of the Institute of Arbitrators.

25.9. The arbitrator shall act as expert and shall be entitled to make such decision or award as he or she thinks just and equitable having regard to the relevant circumstances of the case. The costs of such arbitration shall follow the event or if neither Party succeeds they shall be apportioned between the Parties as the arbitrator, in his or her absolute discretion, thinks fit.

25.10. Any award or decision of the arbitrator shall be final and binding on the Parties.

26. OMBUDSMAN INVESTIGATIONS

26.1. If a complaint is made about the acts or omissions of the Consultant or its Staff when undertaking work for NLWA the Consultant could be the subject of an investigation by the Ombudsman. In such circumstances the Consultant shall make documents available and co-operate with the investigation and to the extent that either (i) maladministration or (ii) a failure in a Services which it is NLWA's function to provide or (iii) a failure to provide such a Services is found to have occurred due to the acts or omissions of the Consultant, its Staff the Consultant shall pay any compensation awarded or recommended by the Ombudsman.

27. ASSISTANCE IN PROCEEDINGS

27.1. The Consultant shall notify the Authorised Officer of any accident, damage or breach of any statutory provision relating in any way to the Services immediately upon becoming aware of it.

27.2. If requested to do so by the Authorised Officer the Consultant shall provide the Authorised Officer with any relevant information arising out of the provision of the Services in connection with any legal inquiry, hearing, arbitration or Court proceedings in which NLWA may become involved or any relevant disciplinary hearing internal to NLWA and shall give evidence in such inquiries or proceedings or hearings.

27.3. No payment shall be made for this part of the Services to the extent that the incident, accident or other matter resulted from a breach, act or omission on the part of the Consultant.

28. RECOVERY OF SUMS DUE TO NLWA

28.1. Whenever under the Contract any sum of money shall be recoverable from or payable by the Consultant to NLWA it may be deducted from any sum then due, or which at any later time may become due, to the Consultant under this Contract or any other contract with NLWA.

29. VARIATION OF CONTRACT

29.1. NLWA may request a variation to the scope of Services provided that the value of a variation is both below the EU financial thresholds for re-tendering and is not a substantial variation.

29.2. NLWA may request a variation by notifying the Consultant in writing of:

- 29.2.1. the variation together with sufficient information to assess the variation;
- 29.2.2. whether any change to the Contract is required in order to implement the variation; and
- 29.2.3. a time limit within which the Consultant shall respond to the request for a variation and such time limits shall be reasonable having regard to the nature of the variation.

29.3. The Parties shall use reasonable endeavours to agree the variation but neither Party is obliged to accept the variation. If both parties accept the variation, they shall confirm the same in writing.

30. LATE PAYMENT COMMERCIAL DEBTS (INTEREST) ACT 1998

30.1. If NLWA is late in making any payment due to the Consultant under this Contract then NLWA shall pay the Consultant interest on the amount of any such late payment, unless the unpaid sum is in dispute between the Parties.

30.2. The interest payable will be calculated on a daily basis from the day after payment should have been made to the date when payment is actually made.

30.3. The applicable interest rate will be the base rate of the Bank of England from time to time plus 4% per annum. The Parties acknowledge and agree that this interest rate provides the Consultant with a substantial remedy in respect of any late payment of sums due under this Contract, and any right to receive statutory interest, defined under the Late Payment of Commercial Debts (Interest) Act 1998, shall not apply to any payment under the Contract.

31. ENTIRE CONTRACT

31.1. This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with therein. The Contract supersedes any previous agreement between the Parties relating to such matters, all prior negotiations between Parties, and all representations and undertakings made by one Party to the other, whether written or oral. This clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

32. WAIVER

32.1. No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

33. NOTICES

33.1. Any notice demand or other communication in connection with the Contract shall be given in writing (delivered by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such notice shall be addressed to the other Party in the manner referred to in [clause 33.2](#). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

33.2. For the purposes of [clause 33.1](#), the address of each Party shall be:

For NLWA:
Berol House
Unit 1B, 25 Ashley Rd
Tottenham London, N17 9LJ
For the attention of Ursula Taylor
Tel: 020 8489 1489
Fax: 020 8489 1775
post@camden.gov.uk

And a duplicate notice should be sent to:
Andrew Maughan
Legal Adviser
North London Waste Authority
Contract for Financial Consultancy Services
Camden Town Hall
Judd Street
London
WC1H 9JE

For the Consultant:
[Address:]
For the attention of:
Tel:

Fax:
Email:

Either Party may change its address for service by serving a notice in accordance with this clause.

34. SEVERABILITY

34.1. If any provision of this Contract shall become, or be declared by a Court or other competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

35. RIGHTS CUMULATIVE

35.1. All rights granted to either of the Parties shall be cumulative and no exercise by either of the Parties of any right under this Contract shall restrict or prejudice the exercise of any other right granted by this Contract or otherwise available to it.

36. THIRD PARTY RIGHTS

36.1. Except in relation to [clause 24](#), this Contract does not create or intend to confer a benefit on, and shall not be enforceable by any person who is not a Party to this Contract. The application of the Contracts (Rights of Third Parties) Act 1999 in connection with this Contract shall be excluded.

37. LAW AND JURISDICTION

37.1. The Parties accept the exclusive jurisdiction of the English Courts and agree that the Contract, and all non-contractual obligations and other matters arising from or connected with the Contract, are to be governed and construed according to English Law.

SCHEDULE 1: SCOPE OF SERVICES

FINANCIAL SERVICES CONTRACT

SCOPE OF SERVICES

To provide financial consultancy services, advice and support on all aspects of the Authority's residual waste management requirements and consequential impacts on other aspects of the Authority's activities.

Tasks may include the following areas as required by the NLWA but this is not an exhaustive list:

1. Preparation of and input into financial modelling work for any business case, options work or funding proposal for future development.
2. Financial analysis, comparative analysis of options or scenarios, business valuation and financial advice to support decision making processes.
3. Reporting to and presenting financial matters to meetings of:
 - a. the Partnership Board;
 - b. the Chief Executives of the Authority's Constituent Boroughs;
 - c. senior officers of the Authority or the Authority's Constituent Boroughs; and
 - d. Authority Members.
4. Advice on capital investment options, funding approach for new infrastructure or redevelopment, including risk profiles, benefits and revenue costs associated with various options and producing a funding strategy or other reports as required.
5. Advice on possible sources of income, security of income and maximising the Authority's trading and charging powers.
6. Advice and support with identifying and analysing corporate and project risks and management actions to mitigate those risks.
7. Advice and support with any applications for capital funding or prudential borrowing including: private or public funding avenues; capital contributions to contractors; engagement with UK and European banks; guarantee schemes; and any required engagement on financial matters with central Government or other relevant agencies.
8. Advice on possible options for service delivery including in house or external delivery.
9. Working with and assisting other Authority consultants with a wide range of disciplines and expertise on the project team, to complete relevant tasks.
10. Support of the Authority's application for development consent for the North London Heat and Power Project in relation to financial matters.
11. Support if required on financial matters relating to the Authority's negotiations for the supply of heat to a local heat network.

General

12. Production of financial models (excluding proprietary software), detailed financial and risk reports or high level summaries to set deadlines.
13. Specialist tax advice if required on pensions, company issues, land or other relevant issues to options work.
14. Attendance at meetings of the Authority, internal meetings with officers or liaison meetings with Boroughs as required.
15. To provide support and advice to the Authority's contract management team on the implementation of payment mechanisms or payment formulae, post contract award.
16. To provide support and advice to the Authority on the interpretation and implementation of the Inter Authority Agreement menu pricing, including attending liaison meetings with Directors of Finance of Constituent Boroughs if so required.
17. Advising and working with the Authority's financial team and Financial Adviser in relation to the residual waste strategy and assisting with financial comments for Authority reports or Member briefings.

SCHEDULE 2: METHOD STATEMENTS

SCHEDULE 3: SERVICE STANDARDS

1. NLWA acknowledges that working effectively in partnership with those with whom it contracts plays a very important part in improving NLWA's capacity and capability to deliver. To achieve that partnership approach to delivery, the following set of principles is to operate, where appropriate, with the Consultant. The principles are that the Parties will:
 - 1.1. share success and agree goals for continuous improvement;
 - 1.2. share information and maintain good communication links;
 - 1.3. systematically examine all activities to agree who is best placed to carry them out;
 - 1.4. recognise and respect each other's agenda, taking account of where they differ;
 - 1.5. make explicit the shared vision and objectives and each other's roles in delivery;
 - 1.6. work jointly through all stages of policy or product development through to delivery and beyond;
 - 1.7. scope the nature and size of the Services required and agree the most appropriate type and amount of consultancy input required;
 - 1.8. agree roles and responsibilities;
 - 1.9. agree the purpose and objectives of the Services, ensuring there is a measurable outcome that can be linked to the relevant task;
 - 1.10. cost the level of Services required in accordance with the Agreed Rates;
 - 1.11. agree the key personnel of the Consultant (including any subcontractors) who will be responsible for delivering the Services;
 - 1.12. agree milestones and review points for deliverable tasks; and
 - 1.13. agree any changes and their consequences with NLWA prior to their implementation.
2. The Consultant shall take all appropriate steps to ensure that neither it nor any Staff is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant or Staff and the duties owed to NLWA under the provisions of the Contract. The Consultant shall disclose to NLWA full particulars of any such conflict of interest which may arise.
3. The Consultant shall have sound knowledge of issues/problems relating to the public sector and possess the relevant qualifications and certificates applicable to their discipline which relate to the area of consultancy required and the Services provided. They should also have experience of methodologies relevant to their area of consultancy.
4. The Consultant shall take measures to ensure their personnel (and any subcontractors) selected to deliver the Services will be briefed adequately to deliver support in the business culture of NLWA.
5. The Consultant agrees to facilitate skills and knowledge transfer to NLWA's staff during the Contract Period.

SCHEDULE 4: TASK FORM

The Services

Date	
Task Number	
Description of Task	
Estimated Cost of Task	
Timescales for Task (state clearly if time is of the essence)	
Other Information	

SCHEDULE 5: STAFF

Consultant's Staff (insert name)	Grade (Director/Principal Senior/Associate Junior/Trainee)	Area(s) of expertise, Qualifications and Experience

Consultant's Representative:

SCHEDULE 6: AGREED RATES

Daily rates shall be calculated assuming a 7.5 hour day.

Table 1: Daily Rates (VAT not included) at the Commencement Date

Consultant Grade	Daily Rates
Director/Principal	
Senior/Associate	
Modeller	
Junior/Trainee	

The day rates quoted above are exclusive of expenses or other disbursements. Reasonable travel and subsistence expenses and disbursements are to be charged as incurred.

IN WITNESS WHEREOF the Parties have executed this Contract the day and year first before written

**EXECUTED ON BEHALF OF
NORTH LONDON WASTE AUTHORITY**

.....
Duly Authorised Officer

.....
Name

**EXECUTED ON BEHALF OF
[Insert name of winning tenderer]**

.....
Authorised Signatory

.....
Name