**(1) The Council of the Isles of Scilly [THE AUTHORITY]**

**-and-**

**(2) [THE CONTRACTOR]**

**AGREEMENT**

Relating to the provision of

18 Months Waste Haulage Services for Containerised Waste & Dry Recyclates between St Mary’s, Isles of Scilly and Penzance, Cornwall

**(Lot 1/2/3)**

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**THIS AGREEMENT** is made on [*date in manuscript*]

**BETWEEN**

1. **The Council of the Isles of Scilly** of **Town Hall, St Mary’s, Isles of Scilly, TR21 0LW** (the “Authority”); and
2. **[CONTRACTOR] LIMITED** (company registered number **[ ]**) whose registered office is at **[ ]** (the “Contractor”).

**RECITALS:**

(A) The Authority named in Contract Notice WTS 170316 is contracting with a Contractor for the Removal of Waste from St Mary’s, Isles of Scilly to a Suitable Waste Management Site

(B) The Authority and the Contractor have agreed that the Contractor shall provide and the Authority shall co-operate with it in providing the Services in the manner and upon the terms hereinafter set out.

**OPERATIVE PROVISIONS:**

**Part 1 – General Provisions**

1. **Definitions and Interpretations**

1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

“1976 Act” means the Race Relations Act 1976.

“1999 Act” means the Local Government Act 1999 (as amended by the Local Government and Public Involvement in Health Act 2007).

“Agreement” means this agreement between the Authority and the Contractor consisting of these clauses and any attached Schedules, the Invitation to Tender, [and any other documents (or parts thereof) specified by the Authority].

“Approval” and “Approved” means the written consent of the Contract Manager.

“Authority Property” means any property, other than real property, issued or made available to the Contractor by the Authority in connection with the Agreement.

“Authority Related Party” means any officer, servant, employee or agent of the Authority acting in that capacity.

“Best Value Duty” means the duty imposed on the Authority by Part 1 of the 1999 Act and under which the Authority is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act.

“Commencement Date” means [the date of the Agreement].

“Commercially Sensitive Information” means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:

1. which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or
2. that constitutes a trade secret.

“Commercially Sensitive Information Schedule” means the Schedule containing a list of the Commercially Sensitive Information.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information.

“Contract Manager” means the person for the time being appointed by the Authority as being authorised to administer the Agreement on behalf of the Authority or such person as may be nominated by the Contract Manager to act on its behalf.

“Contract Waste” means all residual and bulky waste, as defined in the Specification, which is to be included as directed to the Contractor’s Representative by the Contract Manager, together with any other such non-hazardous waste as required from time to time to be removed from the site, subject to any agreed variation in associated cost..

“Contractor Related Party” means the Contractor's agents and Sub-Contractors and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and any person on or at the Authority’s Premises at the express or implied invitation of the Contractor (other than the Authority).

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Authority.

“Contractor’s Representative” means the individual authorised to act on behalf of the Contractor for the purposes of the Agreement.

“Criminal Records Bureau” means the bureau established pursuant to Part V of the Police Act 1997.

“Default” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

“Equipment” means the Contractor’s equipment, plant, materials, and such other items supplied and used by the Contractor in the performance of its obligations under the Agreement.

“Environmental Information Regulations” means the Environmental Information Regulations 2004.

“Extension” means the extension of the duration of the Agreement agreed in accordance with clause 47.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Contractor’s Staff or any staff of any sub-contractor.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

“Good Industry Practice” means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000.

“Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable 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 registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender” means an invitation for Contractors to bid for the Services required by the Authority.

“Key Personnel” mean those persons named in the Specification as being key personnel.

“Landfill Tax” has the meaning defined in Finance Act 1996 (sections 39 to 71 inclusive, and Schedule 5); Landfill Tax Regulations 1996 (SI 1996 No. 1527), as amended; Landfill Tax (Qualifying Material) Order 2011 (SI 2011 No. 1017); Landfill Tax (Prescribed Landfill Activities) Order 2009 (SI 2009 No. 1929); and any subsequent legislation.

“Law” means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.

“Elements” means the Two aspects of the Services which will be let as Lots or a single contract i.e.:

* Transportation of containerised materials to an appropriate location on St Marys for loading and onward marine shipment, in accordance with current UK regulations and with all necessary permissions from relevant harbour and port authorities, to an appropriate authorised mainland port.
* Marine shipping, offloading and haulage to a contractor appointed by a separate procurement process.

“Month” means calendar month.

“Named Employee” has the meaning given to it in clause 32.1

“Party” means a party to the Agreement and “Parties” shall be construed accordingly.

“Premises” means the location where the Services are to be performed, as specified in the Specification.

“Price” means the price exclusive of any applicable Tax, payable to the Contractor by the Authority under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with clause 24.

“Pricing Schedule” means the Schedule containing details of the Price.

“Quality Standards” means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body that a skilled and experienced operator engaged in the same type of industry or business as the Contractor would reasonably and ordinarily be expected to comply as supplemented by the Specification.

“Regulatory Bodies” means those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party Contractor appointed by the Authority from time to time, to provide any services which are substantially similar to any of the Services, and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement, whether those services are provided by the Authority internally and/or by any third party.

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

“Schedule” means a schedule attached to the Agreement.

“Services” means the services to be provided as specified in the Specification.

“Specification” means the description of the Services to be provided under the Agreement and attached as the Specification Schedule.

“Specification Schedule” means the Schedule containing details of the Specification.

“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.

“Staff” means all persons employed by the Contractor to perform the Agreement together with the Contractor’s servants, agents and sub-contractors used in the performance of the Agreement.

“Sub-Contractor” means any sub-contractor or any person engaged by the Contractor from time to time as may be permitted by this Contract to procure the provision of the Services (or any of them).

“Tax” means value added tax.

“Tender” means the Contractor’s response to the Invitation to Tender (as subsequently clarified in [ ]).

“Term” means the period of duration of the Agreement in accordance with clause 2.1.

“Users” means a reasonably representative sample of those users who consume or benefit from the Services

“Variation” has the meaning given to it in 43.1

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London

* 1. In the Agreement except where the context otherwise requires:

1. the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
2. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
3. words importing the masculine include the feminine and the neuter;
4. reference to a clause is a reference to the whole of that clause unless stated otherwise;
5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
6. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
8. headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

**2 Term**

2.1 The Agreement shall take effect on the 17th April 2017 or on any early date upon which the Contractor and the Authority execute the Agreement which ever is the sooner and shall, subject to clause 2.2, be completed by 17th April 2018, or upon completion of the removal of the Contract Waste, unless another completion date is agreed between the Authority and the Contractor, and unless it is otherwise terminated in accordance with the Agreement, or otherwise lawfully terminated.

2.2 The Authority may seek to extend the duration of the Agreement in accordance with clause 47. During the Extension, the obligations under the Agreement shall continue (subject to any Variation) or adjustment to the Price pursuant to clause 24 until the expiry of the period specified in accordance with clause 47.

**3 Contractor Warranties and Undertakings**

3.1. **Contractor Undertakings**

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

* + 1. it will not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself or a Sub-Contractor.
  1. **Contractor Warranty**

The Contractor warrants and represents to the Authority that as at the date of this Contract:

3.2.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;

* + 1. it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
    2. all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken;
    3. the obligations expressed to be assumed by the Contractor under this Contract will be, legal, valid, binding and enforceable;
    4. no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract, any Ancillary Document or any Other Contract Document;
    5. it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract; and
    6. no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
    7. it is undertaken all necessary due diligence in compiling it tender submission in response to the Authority’s invitation to tender and in accepting this Agreement. Any such due diligence should include but is not limited to discussion with all other relevant authorities and bodies with whom the Contractor will interact during the term of the Agreement, and that all costing has been priced accordingly.
    8. it has obtained all necessary permissions and permits, both on land, and sea, to undertake and perform the Services

and the Authority relies upon such warranties and representations.

* 1. **No Warranty by Authority**

Subject to Clause 3.5 (Fraudulent Statements), the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the data provided in the Invitation to Tender documentation.

* 1. **No Liability to Contractor**

Subject to Clause 3.5 (Fraudulent Statements) neither the Authority nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

* + 1. any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the data provided in the Invitation to Tender; or
    2. any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.
  1. **Fraudulent Statements**

The Contractor warrants:

3.5.1 nothing in this Clause 3 (General Warranties and Undertakings) shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently prior to the date of this Contract; and

* + 1. the provisions of this Clause 3 (General Warranties and Undertakings) are without prejudice to the Contractor’s express rights and remedies under or pursuant to this Contract.
  1. **Contractor’s Due Diligence**

The Contractor warrants:

* + 1. they have gathered all information necessary to perform its obligations under this Contract; and
    2. it will fulfil the duties of the Authority in the haulage, treatment and/or disposal of Contract Waste.

**4 Authority’s Obligations**

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

**5 Entire Agreement**

5.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

5.2 Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. Should the Contractor become aware of any ambiguities or discrepancies in or between the Contract Documents, the Contractor shall immediately inform the Contract Manager giving full details of the ambiguity or discrepancy. Any such notified ambiguities or discrepancies or any ambiguities or discrepancies otherwise coming to the notice of the Contract Manager shall be resolved by the Contract Manager who shall issue to the Contractor any appropriate instructions.

5.3 In the event of and only to the extent of any conflict between the body of the Agreement, Specification, Invitation to Tender, Contractor’s Tender and other documents referred to or attached to the Agreement, the conflict shall be resolved in accordance with the following order of precedence:

(1) the Agreement;

(2) the Specification;

(3) the Contractor’s completed Pricing Schedule;

(4) the Contractor’s Service Delivery Plan; and

(5) any other document referred to in the Agreement.

Unless expressly agreed, a document varied pursuant to Clause 43 shall not take higher precedence than specified here.

5.4 The Agreement will be executed as a single Contract. . Where the Services are sub-contracted, the principal Contractor shall liaise with and work with such parties and shall include any costs for this in their tender.

**6 Scope of Agreement**

6.1 Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Authority and the Contractor.

**7 Notices**

7.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

7.3 For the purposes of clause 7.2, the address of each Party shall be:

(a) For the Authority:

Council of the Isles of Scilly, Town Hall,

St Marys, Isles of Scilly, TR210LW

For the attention of Keith Grossett:

Tel: +44 1720424491

E-mail: Tanya.Saker@scilly.gov.uk

(b) For the Contractor:

[ ]

[Address: ]

[ ]

For the attention of:

Tel:

E-mail:

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

* 1. The Contractor's Representative shall be [                    ] or such other person appointed pursuant to this Clause. The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Authority, the Authority and the Contract Manager shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Authority and the Contractor Manager shall not be required to determine whether any express authority has in fact been given.
  2. The Contractor may by notice to the Authority change the Contractor's Representative. Where the Contractor wishes to do so, it shall by written notice to the Authority propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).
  3. The Contract Manager shall be appointed by the Authority at, or prior to, the Contract Commencement date or such other person appointed pursuant to this Clause. The Contract Manager shall exercise the functions and powers of the Authority in relation to the Project which are identified in this Contract as functions or powers to be carried out by the Contract Manager. The Contract Manager shall also exercise such other functions and powers of the Authority under this Contract as may be notified to the Contractor from time to time.
  4. The Contract Manager shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this Clause, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Contract Manager and all references to the "Contract Manager" in this Contract (apart from this Clause) shall be taken as reference to such person so far as they concern matters within the scope of such person's authority.
  5. The Authority may by notice to the Contractor change the Contract Manager. The Authority shall (as far as practicable) consult with the Contractor prior to the appointment of any replacement for the Contract Manager, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of an Emergency, be such date as will not cause material inconvenience to the Contractor in the execution of its obligations under this Contract).

**8 Mistakes in Information**

* 1. The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the provision of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

**9 Conflicts of Interest**

9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of the Authority there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Authority under the provisions of the Agreement. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

* 1. The provisions of this clause shall apply during the continuance of the Agreement and for a period of two years after its termination.

**10 Fraud**

* 1. The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, and directors) and/or any of the Contractor’s suppliers, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

**Part 2 – The Provision of the Services**

**11 The Services**

11.1 The Contractor shall provide the Services during the Term in accordance with the Authority’s requirements as set out in the Specification and the terms of the Agreement in consideration of the payment of the Price. The Authority shall have the power to inspect and examine the performance of the Services at the Authority’s Premises at any reasonable time or, provided that the Authority gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

11.2 The Contractor shall at all times deliver the Services in accordance with the Law.

11.3 In the event that the Authority notifies the Contractor of the Authority’s reasonably held opinion that any part of the Services do not meet the requirements of the Agreement or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Authority.

11.4 Subject to the Authority providing Approval in accordance with clause 13.3, timely provision of the Services shall be of the essence of the Agreement, including in relation to commencing the provision of the Services within the time agreed or on a specified date.

11.5 Without prejudice to any other rights and remedies the Authority may have pursuant to the Agreement, the Contractor shall reimburse the Authority for all reasonable damages, loss and costs incurred by the Authority which have arisen as a consequence of the Contractor’s delay in the performance of its obligations under the Agreement and which delay the Contractor has failed to remedy following reasonable notice from the Authority. For the avoidance of doubt, the Contractor’s obligation to reimburse the Authority under this clause does not arise to the extent that the delay was caused by a delay or failure by the Authority to provide Approval under clause 13.3.

11.6 The Contractor shall remove all Contract Waste from the Authority Premises as directed by the Contract Manager. The Contractor shall take responsibility and ownership of Contract Waste whilst it is within their care.

**12 Manner of Carrying Out the Services**

12.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.

12.2 All Equipment brought onto the Authority’s Premises shall be at the Contractor’s own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Authority’s Premises will remain the property of the Contractor.

12.3 The Contractor shall maintain all items of Equipment within the Authority’s Premises in a safe, serviceable and clean condition.

12.4 All Equipment shall be at the risk of the Contractor and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.

12.5 The Authority shall have the power at any time during the performance of the Services to order in writing that the Contractor:

1. remove from the Authority’s Premises any Equipment which in the opinion of the Authority is either hazardous, noxious or not in accordance with the Agreement; and
2. if the Authority has ordered the Contractor to remove any item of Equipment in accordance with clause 12.5 (a) above, to replace such item with a suitable substitute item of Equipment.

12.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the services in order to leave the Authority’s Premises in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible for making good any damage to the Authority’s premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of the Contractor’s employees, servants, agents, suppliers or sub-contractors.

12.7 Access to the Authority’s Premises shall not be exclusive to the Contractor but shall be limited to such Staff and the Contractor’s suppliers as are necessary to perform the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others on the Authority’s Premises as the Authority may reasonably require.

12.8 The Contractor shall be required to provide evidence of the Certified Tonnage of Contract Waste leaving the Authority Site, together with evidence of the Certified Tonnage on the Contract Waste delivered to the final destination site in accordance with the Specification. The Authority will pay the Contractor the value of the total of the Certified Tonnage in accordance with the Price upon receipt of the evidence required subject to a maximum weight variation of 2% of the Certified Tonnage amount.

**13 Standard of Work**

13.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Agreement, the Contractor shall agree the relevant standard of Services with the Contract Manager prior to the delivery of the Services, and the Contractor shall undertake its obligations in accordance with Good Industry Practice. The Contractor shall at all times comply with statutory requirements for the loading, haulage and disposal of Contract Waste.

13.2 The Contractor warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services

13.3 The introduction of new methods or systems which adversely affect the provision of the Services shall be subject to prior Approval.

13.4 The signing by the Contract Manager (or his representative) of time sheets or other similar documents shall not be construed as implying the Contractor’s compliance with the Agreement.

13.5 The Contractor is required to produce all risk assessments, methodologies and work program to enable the Services to be provided in accordance with the Specification. All risk assessments, methodologies and work programmes will be submitted to the Authority for approval and the Authority at its sole discretion will be entitled to reject any risk assessments, methodology or work programme which fail to deliver the required standard of work in accordance with clause 13.1 and require the Contractor at the Contractors own expense to prepare new or alternate Risk Assessments and Methodologies to the satisfaction of the Authority.

13.6 It is the responsibility of the Contractor to ensure any port or other landing areas are suitable for use and that they have the appropriate approvals and consents to allow such areas to be used for the purpose of providing the Services. The Contractor warrants that the cost of using any such port or landing area has been included within the Contractors total cost for providing the Services. Any refusal or withdrawal of consent will be at the risk of the Contractor, and the cost of finding alternate methods of removal as a result of such refusal or withdrawal will be borne by the Contractor.

**14 Key Personnel**

14.1 Key Personnel shall not be released from providing the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

14.2 Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

14.3 The Authority shall not unreasonably withhold its agreement under clause 14.1 or clause 14.2. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Agreement which could be caused by a change in Key Personnel.

**15 Contractor’s Staff**

15.1 The Authority reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Authority:

1. any member of the Staff; or
2. any person employed or engaged by a sub-contractor, agent or servant of the Contractor;

Whose admission or continued presence would be, in the reasonable opinion of the Authority, undesirable.

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

15.3 The Contractor’s Staff, engaged within the boundaries of any of the Authority’s Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

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

15.5 The Contractor shall bear the cost of any notice, instruction or decision of the Authority under this clause.

**16 Inspection of Premises**

16.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Agreement to be carried out and be satisfied in relation to all matters connected with the performance of the Agreement.

**17 Licence to occupy Authority’s Premises**

17.1 Any land or Premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Agreement, shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Agreement. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.

17.2 The Contractor shall not use the Authority’s Premises for any purpose or activity other than the provision of the Services.

17.3 Should the Contractor require modifications to the Authority’s Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor’s expense. The Authority shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.

17.4 The Contractor shall (and shall ensure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor, his employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

17.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of whatsoever nature in favour of the Contractor or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Agreement, the Authority retains the right at any time to use in any manner the Authority sees fit any premises owned or occupied by it.

**18 Authority Property**

18.1 Where the Authority for the purpose of the Agreement issues Authority Property to the contractor on a hire basis, or at its discretion as a free issue, such property shall be and remain the property of the Authority.  The Contractor shall not in any circumstances have a lien on the Authority Property and the Contractor shall take all reasonable steps to ensure that the title of the Authority to such Authority Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Agreement.

18.2 Any Authority Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.

18.3 The Contractor shall maintain all Authority Property in good order and condition, excluding fair wear and tear, and shall use Authority Property solely in connection with the Agreement and for no other purpose without prior Approval.

18.4 The Contractor shall ensure the security of all Authority Property, whilst in the Contractor’s possession, either on its premises or elsewhere during the performance of the Agreement, in accordance with the Authority’s reasonable security requirements as required from time to time.

18.5 The Contractor shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Authority Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Authority.  The Contractor’s liability set out in this clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Authority. The Contractor shall inform the Contract Manager within 2 Working Days of becoming aware of any defects appearing in or losses or damage occurring to Authority Property made available for the purposes of the Agreement.

**19 Sub-Contracting for the delivery of the Services**

19.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

19.2 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which allows the Authority to enter into a direct agreement with the Sub-Contractor under the same terms and conditions as the Contractor – Sub-Contractor contract should the Contractor – Sub-Contractor contract be terminated or fail to deliver the Services.

19.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing this Agreement, it is agreed by the parties that the cost incurred by the Contractor in providing this instruction is included within the Price.

19.4 The Contractor will, where it is providing services at the Authority’s Site, or under the direct over-sight of the Authority and it intends to enter into any sub-contract in the performance of the Services notify the Authority of the contact details and legal representatives of its sub-contractor prior to performance of the Services.

19.5 In addition to clause 19.4 above the Authority, during the Term of the Agreement, shall require the Contractor to:

1. notify the Authority of any changes to information provided under clause 19.4, and
2. Notify the Authority of the name, contact details and legal representatives of any new subcontractors which the main contractor subsequently involves in such works or services.

**20 Offers of Employment**

20.1 For the duration of the Agreement and for a period of 12 months thereafter neither of the Authority or the Contractor shall employ or offer employment to any of the other Party’s staff who have been associated with the procurement and/or the contract management of the Services without that other Party’s prior Approval.

**Part 3 – Payment and Price**

**21 Price**

21.1In consideration of the performance of the Contractor’s obligations under the Agreement by the Contractor, the Authority shall pay the Price in accordance with Clause 22.

21.2 The Authority shall pay the Contractor, on the production of a valid Tax invoice, in addition to the Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Agreement.

**22 Payment and Tax**

22.1 The Authority shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the reasonable satisfaction of the Authority.

22.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice.

22.3 Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.

22.5 The Authority may, in accordance with clause 45.1 (a), reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

22.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement under clause 52.3 for failure to pay undisputed charges.

**23 Recovery of Sums Due**

23.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Authority.

23.2 Any overpayment by either Party, whether of the Price or of Tax, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

23.3 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

**24 Price adjustment on Extension**

* 1. Subject to clause 22.4 the Price shall remain fixed for the Term.
  2. In the event of a possible Extension, the Authority reserves the right to review any charges payable to the Contractor for the provision of services beyond the Term.

24.3 If the Authority approaches the Contractor in accordance with Clause 47 concerning an Extension, the Authority must agree the Price to be payable to the Contractor for the provision of any services during the Extension, at least 1 months prior to the end of the Term.

24.4 Any claim for an increase in the charges during an Extension will only be considered if the increase does not exceed the percentage change in the Office of National Statistics’ Consumer Prices Index (or another such index as notified to the Contractor in writing) between the Commencement Date and the date 3 months before the end of the Term.

**25 Euro**

25.1 Any legislative requirement to account for the services in euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.

25.2 The Authority shall provide all reasonable assistance to facilitate compliance by the Contractor under clause 25.1.

**26 Change of Law**

26.1 The Contractor shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the Price and/or any charges payable by the Contractor as the result of:

1. a General Change in Law; or
2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.

26.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 26.1) or during any extension agreed pursuant to clause 24, the Contractor shall notify the Authority of the likely effects of that change, including:

1. whether any change is required to the Services, the Price or the Agreement; and
2. whether any relief from compliance with the Contractor’s obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

26.3 As soon as practicable after any notification in accordance with clause 26.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

(a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;

(b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;

(c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and

(d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

26.4 Any increase in the Price or relief from the Contractor’s obligations agreed by the Parties pursuant to this clause 26 shall be implemented in accordance with clause 43.

**Part 4 - Statutory Obligations, Codes of Practice and Regulations**

**27 Prevention of Corruption**

27.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or any other contract with the Authority, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

27.2 The Contractor warrants that it has not paid commission or has agreed to pay any commission to any employee or representative of the Authority by the Contractor or on the Contractor’s behalf.

27.3 Where the Contractor or Contractor’s employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor’s behalf, engages in conduct prohibited by clauses 27.1 or 27.2 in relation to this or any other contract with the Authority, the Authority has the right to:

1. terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the provision of the Goods and any additional expenditure incurred by the Authority throughout the remainder of the Term; or
2. recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause, whether or not the Agreement has been terminated.

**28 Discrimination**

28.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998, the Equalities Act 2010 or other relevant legislation, or any statutory modification or re‑enactment thereof.

28.2 The Contractor shall take all reasonable steps to secure the observance of clause 28.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

**29 The Contracts (Rights of Third Parties) Act 1999**

29.1 No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Authority or the Contractor) shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to the clause 29. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**30 Environmental Sustainability Requirements**

30.1 The Contractor shall, when working on the Authority’s Premises, perform the Agreement in accordance with the Authority’s environmental sustainability requirements;

(a) Carbon Reduction Commitment (Zero carbon by 2030)

(b) Waste Reduction Strategy (25% waste reduction by 2030)

(c) Conserving valuable resources such as energy, water, fuel, wood, paper, etc and and phasing out other substances damaging to health and the environment.

**31 Health and Safety**

31.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Agreement. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority’s Premises and which may affect the Contractor in the performance of the Agreement.

31.2 While on the Authority’s Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working on those Premises.

31.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of the Agreement on the Authority’s Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

31.4 The Contractor shall comply with the requirements of the Health and Safety at Work 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 Premises in the performance of the Agreement.

31.6 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 Authority on request.

**32 Disclosure and Barring Service**

32.1 The Contractor shall procure that in respect of all potential Staff or persons performing any of the Services (each a “Named Employee”) before a Named Employee begins to attend any Authority premises to perform any of the Services:

1. each Named Employee is questioned as to whether he or she has any convictions; and
2. the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in accordance with Part V of the Police Act 1997 in respect of each Named Employee. The check for each Named Employee shall include:

(i) a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Services may involve contact with children; and/or

(ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000 where the performance of the Services may involve contact with vulnerable adults (as defined in the Care Standards Act).

1. a copy of the results of such check are notified to the Authority.

32.2 The Contractor shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a Criminal Records Bureau check, is employed or engaged by the Contractor or on the Contractor’s behalf without the Authority’s prior written consent (such consent not to be unreasonably withheld or delayed).

32.3 The Contractor shall procure that the Authority is notified of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Contractor (or any employee of a sub-contractor involved in the provision of the Services). The Parties agree that where such notification is made it shall be reasonable for the Authority to withhold access to any premises occupied for the purposes of the Services from the member of Staff concerned, pursuant to clause 15.1.

**Part 5 - Protection of Information**

**Data Protection**

The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule A. The only processing that the Processor is authorised to do is listed in Schedule A by the Controller and may not be determined by the Processor.

The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

a systematic description of the envisaged processing operations and the purpose of the processing;

an assessment of the necessity and proportionality of the processing operations in relation to the Services;

an assessment of the risks to the rights and freedoms of Data Subjects; and

the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

process that Personal Data only in accordance with Schedule A, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

nature of the data to be protected;

harm that might result from a Data Loss Event;

state of technological development; and

cost of implementing any measures;

Ensure that :

* + - 1. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A);

it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

are aware of and comply with the Processor’s duties under this clause;

are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

have undergone adequate training in the use, care, protection and handling of Personal Data; and

not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;

the Data Subject has enforceable rights and effective legal remedies;

the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

Subject to clause 13.6, the Processor shall notify the Controller immediately if it:

receives a Data Subject Request (or purported Data Subject Request);

receives a request to rectify, block or erase any Personal Data;

receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

becomes aware of a Data Loss Event.

The Processor’s obligation to notify under clause 13.5 shall include the provision of further information to the Controller in phases, as details become available.

Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 13.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

the Controller with full details and copies of the complaint, communication or request;

such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

assistance as requested by the Controller following any Data Loss Event;

assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner's Office.

The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

the Controller determines that the processing is not occasional;

the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.

Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

notify the Controller in writing of the intended Sub-processor and processing;

obtain the written consent of the Controller;

enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and

provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

The Controller may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Controller may on not less than 30 Working Days’ notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

Where the Parties include two or more Joint Controllers as identified in Schedule A in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule B in replacement of Clauses 13.1-13.14 for the Personal Data under Joint Control Liability.

**34 Confidentiality**

34.1 Each Party:

1. shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
2. shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

34.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Agreement:

(a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;

(b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Agreement.

34.3 The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor’s confidentiality obligations under the Agreement.

34.4 The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Agreement.

34.5 The provisions of clauses 34.1 to 34.4 shall not apply to any Confidential Information received by one Party from the other:

(a) which is or becomes public knowledge (otherwise than by breach of this clause);

(b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(d) is independently developed without access to the Confidential Information; or

(e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 35.

34.6 Nothing in this clause shall prevent the Authority:

1. disclosing any Confidential Information for the purpose of:

(i) the examination and certification of the Authority’s accounts; or

(ii) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

(b) disclosing any Confidential Information obtained from the Contractor:

(i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

(ii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Agreement;

provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

34.7 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

34.8 The Authority and the Contractor acknowledge that any Confidential Information originating from:

 34.8.1   the Authority, its employees, servants or agents is the property of the Authority; and

34.8.2   the Contractor, its servants, agents or the [contractor] Personnel is the property of the Contractor.

34.9     The parties acknowledge that the Authority is obliged to disclose the provisions of this Contract in accordance with the Office of Government Commerce’s Guidance Note of September 2010, except to the extent that any information contained within it is exempt from disclosure in accordance with FOIA.  In determining whether any information is exempt the Authority shall consult with the Contractor and shall take its reasonable concerns into consideration, provided that the Authority shall have the final decision in its absolute discretion.  The Contractor shall co-operate and assist the Authority to publish this Contract in accordance with the Authority‘s obligation.

**35 Freedom of Information**

35.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor’s expense) to enable the Authority to comply with these Information disclosure requirements.

35.2 The Contractor shall and shall procure that its sub-contractors shall:

(a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within [two] Working Days of receiving a Request for Information;

(b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within [five] Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

(c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].

35.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

(a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and

(b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

35.4 The Contractor acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

(a) without consulting with the Contractor, or

(b) following consultation with the Contractor and having taken its views into account.

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

35.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 35.4.

**36 Security of Confidential Information**

36.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Contractor undertakes to maintain security systems approved by the Authority.

36.2 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor’s obligations under Clause 34. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

**37 Publicity and Media**

37.1 Without prejudice to the Authority’s obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).

37.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 37.1 by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 37.1 by its sub-contractors.

**38 Security**

38.1 The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

**39 Intellectual Property Rights**

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

(a) furnished to or made available to the Contractor by the Authority shall remain the property of the Authority;

(b) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Agreement shall belong to the Authority and the Contractor shall not, and shall procure that the Contractor’s employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Contractor may obtain in performing the Agreement except information which is in the public domain.

39.2 The Contractor shall obtain Approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Authority, and shall be granted at no cost to the Authority.

39.3 It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Term on written demand indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:

(a) designs furnished by the Authority;

(b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Agreement.

39.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

(a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Authority; and

(c) shall not settle or compromise any claim without the Authority’s prior written consent (not to be unreasonably withheld or delayed).

39.5 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Agreement and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause 39.3(a) and (b),

39.6 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of the Agreement.

39.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed) either:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or

(b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

39.8 At the termination of the Agreement the Contractor shall at the request of the Authority immediately return to the Authority all materials, work or records held, including any back-up media.

39.9 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

**40 Audit and the Audit Commission**

40.1 The Contractor shall keep and maintain until six years after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority’s representatives or the Audit Commission such access to those records as may be required by the Authority or the Audit Commission in connection with the Agreement.

**Part 6 – Control of the Contract**

**41 Assignment and Sub-Contracting**

41.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Agreement or any part of it without prior Approval. Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Agreement.

41.2 The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

41.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority within 2 Working Days of such request.

41.4 The Contractor shall notify and update the Authority with the names and key contact details of its sub-contractors and shall provide the Authority with any further information that it requires to ensure that acts in accordance with any legal obligations it has.

**42 Waiver**

42.1 The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

42.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 7.

42.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

**43 Variation of the Services**

43.1 The Authority reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever. Such a change is hereinafter called “a Variation”.

43.2 Any such Variation shall be communicated in writing by the Contract Manager to the Contractor’s Representative in accordance with the notice provisions of Clause 7. All Variations shall be in the form of an addendum to the Agreement.

43.3 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Authority and agreed in writing with the Contractor and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of Clause 59.

43.4 The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

**44 Severability**

44.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

**45 Remedies in the Event of Inadequate Performance**

45.1 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Agreement by the Contractor, or the Contractor’s performance of its obligations under the Agreement has failed to meet the requirement set out in the Specification Schedule, then the Authority may, without prejudice to its rights under clause 52 of the Agreement, do any of the following:

(a) make such deduction from the Price to be paid to the Contractor as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide or performed inadequately;

(b) without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will be able to perform such part of the Services in accordance with the Agreement;

(c) without terminating the whole of the Agreement, terminate theAgreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or

(d) terminate, in accordance with clause 52, the whole of the Agreement.

45.2 The Authority may charge to the Contractor any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Authority or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

45.3 If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Authority and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

* 1. In the event that:

(a) the Contractor fails to comply with clause 45.3. above and the failure, is materially adverse to the interests of the Authority or prevent the Authority from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause 45.3 above,

the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

**46 Remedies Cumulative**

46.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**47 Possible Extension of Term**

47.1 Not used.

**Part 7 - Liabilities**

**48 Indemnity and Insurance**

48.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

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

48.3 Subject always to clause 48.1, the liability of either Party for Defaults shall be subject to the financial limits set out in this clause 48.3.

(a) The aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Agreement shall in no event exceed ten million pounds (£10m).

(b) The annual aggregate liability under the Agreement of either Party for all Defaults (other than a Default governed by clause 39.3 or clause 48.3(a)) shall in no event exceed five million pounds (£5m).

48.4 Subject always to clause 48.1, in no event shall either Party be liable to the other for:

(a) loss of profits, business, revenue or goodwill;

(b) loss of savings (whether anticipated or otherwise); and/ or

(c) indirect or consequential loss or damage unless such loss or damage was in contemplation of the Parties at the time the Agreement was entered into.

48.5 The Contractor 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 Contractor, arising out of the Contractor’s performance of the Agreement, 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 Contractor.

48.6 The Contractor shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

48.7 The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies 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.

48.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

48.9 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 48.2.

* 1. Subject to the provisions of this Contract, the Contractor shall be responsible to the Authority for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor. The Contractor shall, as between itself and the Authority, be responsible for the selection of and pricing by all Contractor Related Parties. Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, nor the failure of the same shall, unless expressly stated in this Contract, relieve the Contractor of any of its obligations under this Contract or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

**49 Not Used**

49.1 Not Used

**50 Warranties and Representations**

**50.1 The Contractor warrants and represents that:**

(a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Contractor;

(b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice;

(c) all obligations of the Contractor pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence; and

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

**Part 8 – Default, Disruption and Termination**

**51 Termination on change of control and insolvency**

51.1 The Authority may terminate the Agreement by notice in writing with immediate effect where:

(a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Agreement; or

(b) the Contractor is an individual or a firm and a petition is presented for the Contractor’s bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor’s or firm’s affairs; or

(c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

(d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(e) any similar event occurs under the law of any other jurisdiction.

51.2 The Contractor shall notify the Contract Manager immediately when any change of control occurs. The Authority may only exercise its right under clause 51.1(a) within six months of:

1. being notified that a change of control has occurred; or
2. where no notification has been made the date that the Authority becomes aware of the change of control;

but shall not be permitted to do so where an Approval was granted prior to the change of control of the Contractor.

51.3 If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Authority shall be entitled to terminate the Agreement by notice to the Contractor or the Contractor’s Representative with immediate effect.

**52 Termination on Default**

52.1 The Authority may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor or the Contractor’s Representative with immediate effect if the Contractor commits a Default and if:

(a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or

(b) the Default is not, in the opinion of the Authority, capable of remedy;

(c) the Default is a material breach of the Agreement.

(d) the Agreement has been subject to substantial modification which would have required a new procurement procedure in accordance with section 72(9) Public Contracts Regulations 2015

(e) the Contractor has, at the time of contract award, been in one of the situations referred to in section 57(1) Public Contract Regulations 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or

(f) the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

52.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Authority for any costs charged in connection with such Default of the Contractor.

52.3 The Contractor may terminate the Agreement if the Authority is in material breach of its obligations to pay undisputed charges by giving the Authority 60 Working Days notice specifying the breach and requiring its remedy. The Contractor’s right of termination under this clause 52.3 shall not apply to non payment of the charges or Price where such non payment is due to the Authority exercising its rights under clauses 23.1 and 45.1(a).

**53 Break**

53.1 The Authority shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving one Months’ written notice to the Contractor.

**54 Consequences of Termination**

54.1 Where the Authority terminates the Agreement under clause 52, or terminates the provision of any part of the Agreement under that clause 52, and then makes other arrangements for the provision of Services, the Authority shall be entitled to recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term or any Extension. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 52, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.

54.2 Where the Authority terminates the Agreement under clause 53, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under 53.

54.3 The Authority shall not be liable under clause 54.2 to pay any sum which:

(a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

(b) when added to any sums paid or due to the Contractor under the Agreement, exceeds the total sum that would have been payable to the Contractor if the Agreement had not been terminated prior to the expiry of the Term.

**55 Disruption**

55.1 The Contractor shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

55.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.

55.3 In the event of industrial action by the Staff or the Contractor’s suppliers the Contractor shall seek the Authority’s Approval to its proposals for the continuance of the performance of the Services in accordance with its obligations under the Agreement.

55.4 If the Contractor’s proposals referred to in clause 55.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Agreement may be terminated by the Authority by notice in writing with immediate effect.

**56 Recovery upon Termination**

56.1 Save as otherwise expressly provided in this Agreement and notwithstanding the provisions of;

(a)termination of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

(b) termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Authority under clause 13 (Standard of Work), 23 (Recovery of Sums Due), 27 (Prevention of Corruption), 33 (Data Protection Act), 34 (Confidentiality), 37 (Publicity and Media), 38 (Security), 39 (Intellectual Property Rights), 40 (Audit), 46 (Remedies Cumulative), 48 (Indemnity and Insurance), 49 (Professional Indemnity), 50 (Warranties and Representations), 52 (Termination on Default), 54 (Consequences of Termination), 56 (Recovery on Termination) and 58 (Governing Law).

56.2 At the end of the Term (and howsoever arising) the Contractor shall forthwith deliver to the Authority upon request all the Authority’s Property (including but not limited to materials, documents, information, access keys) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Authority may recover possession thereof and the Contractor grants licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

56.3 At the end of the Term (howsoever arising) and/ or after the Term the Contractor shall provide assistance to the Authority and any new contractor appointed by the Authority to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress. Where the end of Term arises due to the Contractor’s default, the Contractor shall provide such assistance free of charge. Otherwise the Authority shall pay the Contractor’s reasonable costs of providing the assistance, and the Contractor shall take all reasonable steps to mitigate such costs.

**57 Force Majeure**

57.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 6 Months, either Party may terminate the Agreement by notice in writing with immediate effect.

57.2 Any failure or delay by the Contractor in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

57.3 Clause 57 does not affect the Authority’s rights under clause 56.

57.4 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause 57.2 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

57.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

**Part 9 – Dispute and Law**

**58 Governing Law**

58.1 The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.

**59 Dispute Resolution**

59.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the finance director(or equivalent) of each Party.

59.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

59.3 If the dispute cannot be resolved by the Parties pursuant to clause 59.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 59.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

59.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.

59.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

(b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

(d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

(e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.

(f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

**60. Safeguarding**

The Contractor shall develop and maintain awareness and understanding of safeguarding issues with vulnerable adults, children and young people.

The Contractor shall ensure that all allegations, suspicions and incidents of abuse, harm or risk of harm to children and/or vulnerable adults or where there is concern about the behaviour of an individual are reported immediately to the Council’s Representative and the Adult Social Care Team in respect of a vulnerable adult or the Children’s Social Care Team in respect of a child. The Contractor’s safeguarding policies and procedures should include active encouragement to staff in whistle blowing if aware of suspected abuse.

The Contractor shall ensure that children and/or vulnerable adults are safeguarded from any form or exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhumane or degrading treatment through deliberate intent, negligent acts or omissions.

The Contractor shall comply with all statutory obligations and Council and Government policies (including but not limited to the Council’s Safeguarding Policy, Safeguarding Guidance for Providers and the South West Safeguarding Procedures) in respect of safeguarding as applicable and amended from time to time.

The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 60 have been met.

The Contractor must comply with any instruction given by the Council in respect of this clause 60

The Parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

The Contractor shall:

1. ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service; and
2. monitor the level and validity of the checks under this clause 60 for each member of staff;
3. Not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.

The Contractor warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

The Contractor shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users, children or vulnerable adults.

The Contractor shall ensure that all personnel engaged in the delivery of the Services regularly receive appropriate safeguarding training in relation to children and/or vulnerable adults in accordance with the Specification or as agreed by the Parties

The Contractor shall appoint an individual of sufficient seniority for the safeguarding of children and/or vulnerable adults. This individual shall be responsible for the implementation and monitoring of the Contractor’s safeguarding policies and procedures in accordance with the terms of this Agreement.

The Contractor shall ensure that it operates a recruitment and selection procedure which aligns with the Council’s safer recruitment and disciplinary standards and which meets the requirements of legislation, equal opportunities and anti-discriminatory practice and ensures the protection of children and vulnerable adults

1. **EQUALITY, DIVERSITY AND HUMAN RIGHTS**

61.1 The Service Provider must follow all applicable equality law when they perform their obligations under the Contract, including:

(a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;

(b) any other requirements and instructions which the Council reasonably imposes related to Equality Law.

61.2 The Service Provider must take all necessary steps, and inform the Council of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

1. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

62.1 In performing its obligations under the agreement, the Service Provider shall:

* + 1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015;
    2. include in contracts with its direct subcontractors and Service Providers provisions which are at least as onerous as those set out in this clause 31;
    3. notify the Customer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement;
    4. maintain a complete set of records to trace the supply chain of all Services provided to the Customer in connection with this Agreement and permit the Customer and its third party representatives to inspect the Service Provider's premises, records, and to meet the Service Provider's personnel to audit the Service Provider's compliance with its obligations under this clause 31.

62.2 The Service Provider represents and warrants that at the date of this agreement it not has been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

63.3 The Customer may terminate the agreement with immediate effect by giving written notice to the Service Provider if the Service Provider commits a breach of this clause 330.

1. **Whistleblowing**
   1. The Contractor shall:
      1. have in place a process whereby its employees may report in confidence any alleged malpractice on the part of the Contractor as regards any part of the provision of the Services;
      2. not take any action against any employee pursuant to its contractual rights in respect of that employee where such employee has in accordance with the process provided pursuant to clause 611.1 and in good faith reported alleged malpractice on the part of the Contractor

**IN WITNESS** whereof the Agreement has been signed and delivered as a deed on the date and year stated at the beginning of this deed.

|  |  |  |
| --- | --- | --- |
| THE COMMON SEAL of THE COUNCIL OF THE ISLES OF SCILLY was affixed in the presence of: | ))) | [Authorised] Signatory |
|  |  |  |
| THE COMMON SEAL of [CONTRACTOR] LIMITED was affixed in the presence of: | ))) | Director/Company Secretary |

SPECIFICATION SCHEDULE

*[insert description of the Services to be supplied including, where*

*appropriate, the Key Personnel, the Premises and the Quality Standards]* PRICING SCHEDULE

*[insert pricing provisions as appropriate]*

MONITORING SCHEDULE

*[insert monitoring provisions as appropriate]*

In line with the Council’s corporate objectives to monitor contracts and agreements in

place to ensure best value is maintained, and also to ensure carbon reduction

principles are embedded in all aspects of Council decision making, the Council seeks

to establish quarterly contract management meetings;

The following Key Performance Indicator (KPI’) applies;

Quarterly contract meetings to address the following agenda items;

|  |  |
| --- | --- |
| **Contract Management Agenda** | |
|  | Introduction |
|  | Minutes from previous meetings   * outstanding issues |
|  | Issues/challenges   * customer issues/feedback |
|  | Health and Safety   * Method statements & risk assessments * Covid secure working practices |
|  | Carbon Reduction / Waste Management   * Activity * Monitoring * Reporting |
|  | Improving the contract   * Opportunities * Changes in legislation |
|  | Any other business |
|  | Next meeting |

COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

*[insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive]*