**DYNAMIC PURCHASING SYSTEM AGREEMENT CONDITIONS**

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1.0 **Definitions and Interpretation**

1.1 The following terms have the following meanings in the Dynamic Purchasing System Agreement: -

|  |  |
| --- | --- |
| ***Award Criteria*** | the award criteria as set out in the Invitation to Tender. |
| ***Call-Off******Award Criteria*** | the award criteria to be used for call –off contracts as set out in the Invitation to Tender. |
| ***Call-Off Conditions*** | the conditions set out at Schedule 4 of this Dynamic Purchasing System Agreement |
| ***Call-Off Contract*** | the legally binding agreement (made pursuant to the provisions of this Dynamic Purchasing System Agreement) for the provision of Services made between the Company and the Contractor comprising:  (i) the Order Form;  (ii) the Call-Off Conditions;  (iii) any Special Conditions; and  (iv) answers to clarifications questions during the further competition process |
|  |  |
| ***Commencement Date*** | 1st June 2018 |
| ***Company*** | Yorwaste Limited |
| ***Company Representative*** | the person duly appointed by the Company and notified in writing to the Contractor to act as the representative of the Company for the purpose of the Dynamic Purchasing System Agreement. |
|  |  |
| ***Contractor*** | the contractor who has been appointed under the Dynamic Purchasing System Agreement and where applicable this shall include the contractor's employees, sub-contractors, agents, representatives, and permitted assigns and, if the Contractor is a consortium or consortium leader, the consortium members. |
| ***Contract Charges*** | the charges payable by the Company to the Contractor for the provision of the Services. |
| ***Contract Standards*** | The standards in the Dynamic Purchasing System Agreement, Call-Off Conditions and Special Conditions, including, but not limited to, the key performance indicators and:   1. the KPI’s 2. with due skill, care and diligence in accordance with the highest professional standards and industry practice; 3. generally to the Company’s satisfaction |
|  |  |
| ***Dynamic Purchasing System Agreement*** | this agreement and all Appendices to this agreement including the Specification, the Call-Off Conditions and answers to clarification questions during the tender process. |
| ***Guidance*** | means any guidance issued or updated by the UK Government from time to time in relation to the Regulations |
| ***Invitation to Tender*** | the Company’s invitation to tender for the Services including all the Appendices and Schedules |
| ***KPI’s*** | the key performance indicators set out in paragraph 9 of the Specification |
| ***Order*** | an order for Services served by the Company on a Contractor in accordance with the Ordering Procedures |
| ***Order Form*** | a document setting out details of an Order in a form to be specified by the Company |
| ***Ordering Procedures*** | the ordering and award procedures specified in clauses 6, 7 and 8 |
| ***Party*** | the Company or the Contractor |
| ***Regulations*** | means the Public Contracts Regulations 2015 |
| ***Request to Participate*** | the Contractor's request to participate for the provision of the Services |
| ***Service*** | the services described in the Specification, to be provided by the Contractor in accordance with the Dynamic Purchasing System Agreement, the Order Form, the Call-Off Conditions and any Special Conditions |
| ***Special Conditions*** | any terms or conditions included at the discretion of the Company in the Call-Off Contract |
| ***Specification*** | the specification set out in Schedule 1 |
|  |  |
| ***Term*** | the period of five years from the Commencement Date subject to clause 2 |

1.2 This Dynamic Purchasing System Agreement shall be governed by English Law.

1.3 References to: -

(a) any Act, Order, Regulation, Statutory Instrument, etc, include any amendment or re-enactment.

(b) one gender include any other gender

(c) persons include corporations

(d) singular includes the plural

(e) clauses are to clauses in the Conditions

(f) the Contractor's staff include the Contractor's partners, directors, employees, agents and sub-contractors.

2.0 **Term of Dynamic purchasing system AGREEMENT**

2.1 The Dynamic Purchasing System Agreement shall take effect on the Commencement Date for a period of 5 years unless it is otherwise terminated in accordance with clause 22.

2.2 Clause 2.1 shall not apply to any Call-Off Conditions made under this Dynamic Purchasing System Agreement which is due to expire after the end of the Term which shall expire in accordance with the terms of the Call-Off Conditions.

3.0 **SCOPE OF DYnamic purchasing system AGREEMENT**

3.1 This Dynamic Purchasing System Agreement governs the relationship between the Company and the Contractor in respect of the provision of the Services by the Contractor to the Company.

* 1. The Company may at their absolute discretion and from time to time order Services from the Contractor in accordance with the Ordering Procedure during the Term.
  2. The Contractor acknowledges that there is no obligation for the Company to purchase any Services from the Contractor during the Term.
  3. No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Company in respect of the total quantities or values of the Services to be ordered by them pursuant to this Dynamic Purchasing System Agreement and the Contractor acknowledges and agrees that it has not entered into Dynamic Purchasing System Agreement on the basis of any such undertaking, statement, promise or representation.

4.0 **CONTRACTOR’S APPOINTMENT**

4.1 The Company appoints the Contractor as a potential supplier of the Services referred to in the Invitation to Tender and the Contractor shall be eligible to be considered for the award of Orders for such Services by the Company during the Term.

1. 1. **NON-EXCLUSIVITY**
   2. The Contractor acknowledges that, in entering this Framework Agreement/Dynamic Purchasing System, no form of exclusivity or volume guarantee has been granted by the Company for Services from the Contractor and that the Company is at all times entitled to enter into other contracts and agreements with other Contractors for the provision of any of the Services.

6.0 **AwarD PROCEDURES**

6.1 Call-Off Contracts shall be awarded using one of the procedures set out in this clause 6.

6.2 **Direct Award**

6.2.1 In exceptional circumstances, where the Company is able to identify one Contractor who offers best value for money for its required Services on the basis of the price(s) submitted by the Contractor in its Tender and who is able to provide the Services within the time required, the Company may place an Order directly with that Contractor using the process set out in clause 6.2.2.

6.2.2 When ordering Services under the Dynamic Purchasing System Agreement directly from one Contractor the Company shall:-

6.2.2.1 identify the relevant Services to meet its requirements;

6.2.2.2 refine and supplement the Call-Off Conditions with Special Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance where applicable;

6.2.2.3 (subject to 6.2.3 below) place an Order with the successful Contractor which:-

(a) states the requirements;

(b) identifies the Services;

(c) states the price payable in accordance with the Tender submitted by the successful Contractor; and

(d) incorporates the Call-Off Conditions and any Special Conditions.

6.2.3 Notwithstanding the fact that the Company has followed the procedure set out above in this clause 6.2, a Company shall be entitled at all times to decline to make an award. Nothing in Dynamic Purchasing System Agreement shall oblige the Company to place any Order.

6.3 **Further Competition**

6.3.1 Where there is more than one Contractor capable of providing the Services identified by the Company the Company shall:-

6.3.1.1 identify the relevant Services to meet its requirements;

6.3.1.2 identify the Contractors capable of performing the Call-Off Contract for the Services requirements;

6.3.1.3 supplement and refine the Call-Off Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;

6.3.1.4 invite tenders by conducting a further-competition for its Services requirements in accordance with the Regulations and Guidance and in particular:-

(a) consult in writing the Contractors capable of performing the Call-Off Contract for the Services requirements and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;

(b) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to submit tenders; and

(c) keep each tender confidential until the expiry of the time limit for the receipt by it of tenders;

6.3.1.5 apply the Call-Off Award Criteria to the Contractors' compliant tenders submitted through the further competition as the basis of its decision to award a Call-Off Contract for its Services requirements; and

6.3.1.6 award its Services requirements by placing an Order with the successful Contractor which:-

(a) states the Services requirements;

(b) states the price payable for the Services requirements in accordance with the tender submitted by the successful Contractor; and

(c) incorporates the Call-Off Conditions and any Special Conditions applicable as modified by the Services requirements.

6.3.2 The Contractor agrees that all tenders submitted by the Contractor in relation to a further competition held pursuant to this Clause 6 shall remain open for acceptance for ninety (90) days (or such other period specified in the invitation to tender issued by the relevant Company in accordance with the Ordering Procedure).

6.3.3 Notwithstanding the fact that the Company has followed the procedure set out above in this Clause 6, the Company shall be entitled at all times to decline to make an award for its Services requirements. Nothing in this Dynamic purchasing System Agreement shall oblige the Company to place any Order for Services.

7.0 **FORM OF ORDER**

7.1 Subject to clause 6 above, the Company may place an Order with the Contractor by serving an Order Form in writing in such form agreed with the Contractor including systems of ordering involving facsimile, electronic mail or other on-line solutions.

7.2 The Order constitutes an offer by the Company to purchase the Services subject to the Call-Off Contract.

8.0 **ACCEPTING AND DECLINING ORDERS**

8.1 Following receipt of an Order, the Contractor shall promptly, and in any event within a reasonable period determined by the Company and notified to the Contractor in writing at the same time as the submission of the Order (which in any event shall not exceed three (3) Working Days), acknowledge receipt of the Order and either:-

8.1.1 notify the Company in writing that it declines to accept the Order; or

8.1.2 notify the Company in writing that it accepts the Order.

8.2 If the Contractor:-

8.2.1 notifies the Company that it declines to accept an Order; or

8.2.2 the time-limit referred to in clause 8.1 has expired;

then the offer from the Company to the Contractor shall lapse and the Company may offer that Order to the Contractor that submitted the next most economically advantageous tender in accordance with the relevant Call Off Award Criteria or, if there is only one Contractor appointed under the Dynamic Purchasing System Agreement, or there is no other capable contractor, the Company may make alternative arrangements for the provision of the Services.

8.3 The Contractor in agreeing to accept such an Order pursuant to clause 8.1 above shall agree to the Call-Off Conditions with the Company for the provision of Services referred to in that Order. The Call-Off Conditions shall be formed on the Company’s receipt of the written confirmation of acceptance of the Order provided by the Contractor (or such similar or analogous form agreed with the Contractor) pursuant to clause 8.2.

9.0 **CALL-OFF CONTRACT PERFORMANCE**

9.1 The Contractor shall perform all Call-Off Contracts entered into with the Company in accordance with:-

9.1.1 the requirements of this Dynamic Purchasing System Agreement; and

9.1.2 the Call-Off Conditions, including any Special Conditions.

9.1.3 In the event of, and only to the extent of, any conflict between the terms and conditions of this Dynamic Purchasing System Agreement, the Call-Off Conditions, and any Special Conditions, the application of the clauses shall prevail in the following order:

1. Dynamic Purchasing System Agreement
2. Call-Off Conditions
3. Special Conditions

10.0 **TRANSFER AND SUB-CONTRACTING**

10.1 The Dynamic Purchasing System Agreement is personal to the Contractor and the Contractor shall not assign, novate or otherwise dispose of the Dynamic Purchasing System Agreement or any part thereof without the previous consent in writing of the Company. The Contractor shall not be entitled to sub-contract any of its rights or obligations under this Dynamic Purchasing System Agreement.

10.2 The Company shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the Dynamic Purchasing System Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Company provided that such assignment, novation or disposal shall not increase the burden of the Contractor’s obligations under the Dynamic Purchasing System Agreement.

11.0 **VARIATIONS TO THE DYNAMIC PURCHASING SYSTEM AGREEMENT**

11.1 Any variations to the Dynamic Purchasing System Agreement must be made in writing and agreed by the Company and all Contractors on the Dynamic Purchasing System Agreement.

11.2 Any variation to the Dynamic Purchasing System Agreement must not amount to a material change in the Dynamic Purchasing System Agreement or the Services.

12.0 **THE CONTRACTOR’S OBLIGATIONS**

12.1 The Contractor shall provide the Services for the Term in accordance with the Specification, the Order, the Call-Off Conditions and any Special Conditions and this Dynamic Purchasing System Agreement and to the Contract Standards.

12.2 The Contractor shall inform the Company Representative immediately if it is unable to provide the Services or if the Contractor is aware of anything which may prevent the Contractor from complying with the Dynamic Purchasing System Agreement.

12.3 Without prejudice to the Company’s other powers under the Dynamic Purchasing System Agreement, if the Contractor fails to provide the Services in accordance with this clause 12, the Company may pay another firm to provide part or all of the Services and the costs incurred may be deducted from the Contract Charges or shall be recoverable as a debt.

13.0 **CONTRACTORS STAFF**

13.1 The Contractor shall employ sufficient staff to ensure that the Services are provided in accordance with the Dynamic Purchasing System Agreement and to the Contract Standards and shall efficiently and competently direct and supervise its employees, agents and subcontractors who are to provide the Services

13.2 The Contractor's staff shall be adequately qualified, competent and suitable in all other respects to provide the Services

13.3 The Company Representative may reasonably require the Contractor in writing to remove from the provision of the Services any member of the Contractor's staff. The Contractor shall immediately remove such staff from the provision of the Services and provide a replacement.

13.4 The Company shall not be liable either to the Contractor or to the staff in question in respect of any cost, expenses, liability, loss or damage occasioned by such removal and the Contractor shall indemnify the Company in respect of any claim made.

1. **HEALTH AND SAFETY, DATA PROTECTION AND OTHER STATUTORY REQUIREMENTS**

**14.1 Health and Safety**

14.1.1 The Contractor shall comply with the requirements of the Health and Safety at Work Act 1974 so far as they apply to the provision of the Service and throughout the Contract Period the Contractor shall have in place a health and safety policy which complies with all statutory requirements.

14.1.2 The Contractor shall promptly notify the Company of any health and safety hazards which may arise in connection with the performance of the Contract and cease all works until the site manager has signed off the hazard.

14.1.3 The Company shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Company’s premises and which may affect the Contractor in the performance of the Contract.

14.1.4 The Contractor and the Company shall ensure the following rules are adhered to at all times:

14.1.4.1 The Contractor shall submit a copy of their health and safety policy to the Company upon request.

14.1.4.2 The Contractor shall ensure it’s staff are familiar with the Company’s health & safety policy. Please see Appendix Six.

14.1.4.3 The Company shall ensure its site managers carry out inductions with the Contractor’s staff prior to work starting at any site.

14.1.4.4 Where practicable, the Contractor’s employees are made identifiable by the Contractors name or company logo affixed to their safety helmet or overalls.

14.1.4.5 The Contractor ensures that employees and other persons under their control have the expertise, experience and competency necessary to enable them to perform that service with due regard for their own health and safety and that of employees and other persons who may be affected by their actions

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14.1.4.6 The Contractor shall ensure its staff sign in upon arrival on site and subsequently sign out when leaving.

14.1.4.7 The Contractor shall ensure it’s staff comply with the Company’s “Yorsafety Basic Standards”. Please see Appendix Eight.

14.1.4.8 The Contractor shall ensure its staff have the following personal protective equipment (“PPE”) for when working on the Company’s sites:

14.1.4.8.1 Safety helmets to BS EN 397, neither damaged nor time expired

14.1.4.8.2 Full body high visibility clothing to BS EN 471 Class 2

14.1.4.8.3 Eye protection to BS EN 166

14.1.4.8.4 Ear protection – plugs to BS EN 352-2

14.1.4.8.5 Hand protection – to BS EN 388, 407, 420 or 511 as appropriate.

14.1.4.9 The only exceptions to these PPE requirements are:

14.1.4.9.1 Personnel inside offices, weighbridge cabins or welfare accommodation

14.1.4.9.2 Personnel operating vehicles or mobile plant with fully enclosed cabs. If operating in an open cabin, or with the window / door open, then eye protection shall be worn.

14.1.4.9.3 Personnel walking directly to or from the car park to the office, reception or welfare block.

14.1.4.9.4 The requirement to wear high visibility trousers may be relaxed for short term visitors whilst under the close supervisor of the site manager. All other PPE requirements shall remain.

14.1.4.9.5 Where any specific task requires changes to the mandatory minimum requirements detailed above, this must be based on a specific written risk assessment and agreed with the Company Representative.

14.1.4.10 The Contractor shall ensure instructions or commands depicted on safety signs are complied with at all times.

14.1.4.11 The Contractor shall ensure that staff only carry out tasks for which they are competent and authorised.

14.1.4.12 The Contractor shall ensure that staff only operate and use plant and equipment for which they are trained and authorised.

14.1.4.13 In order to ensure the safety of all personnel involved, the use of a “Permit to Work” system will be necessary in certain circumstances. A Permit to Work will be required in the following instances:

14.1.4.13.1 Maintenance or removal of in-situ asbestos

14.1.4.13.2 Confined space entry including entry into any enclosed spaces such as tanks, sumps, wells (including baler entry)

14.1.4.13.3 Hot works – including any burning, welding, flame cutting or use of any equipment which may give rise to a source of ignition, e.g. disc cutters, grinders, blow torches

14.1.4.13.4 Work at height, including roof work

14.1.4.13.5 Work on electrical systems

14.1.4.13.6 Construction and demolition

14.1.4.13.7 Crane operations

14.1.4.13.8 Excavation

14.1.4.13.9 Any work on the landfill gas system

14.1.5 Other occasion may arise where a Permit to Work is considered necessary, due to the high risk nature of the project.

14.1.6 Permits shall only be issued by the Company’s site managers on a daily basis. The Contractor shall give prior notice and submit an acceptable method statement and risk assessment to the Company Representative before a Permit to Work can be issued. The Contract Manager shall nominate an authorised supervisor to complete, sign and accept the conditions of the Permit to Work and thoroughly brief the entire working party on its requirements.

14.1.7 Smoking is not allowed in any part of the premises other than the designated smoking area agreed by consultation with the Company Representative. This includes conventional and electronic cigarettes (e-cigarettes).

14.1.8 Welding, burning, grinding or any spark producing procedure or the use of open flames is not carried out until suitable arrangements have been agreed with the Company Representative.

14.1.9 All fires, no matter how small must be reported to the site manager and Company Representative.

14.1.10 In the event of a site evacuation being necessary, the Contractor’s staff shall obey any direction given by the Company’s staff on site.

14.1.11 Employees of the Contractor are not permitted to use any equipment or machinery belonging to the Company.

14.1.12 Equipment that is the property of another contractor shall not be used unless the specific permission of the owner has been obtained.

14.1.13 All portable electrical equipment / power tools used on site must be 110v and be covered by a valid PAT safety test.

14.1.14 Guards or fencing shall not be moved from machines or equipment without exception.

14.1.15 Car parking is only permitted in designated areas. Vehicles shall not be parked outside of these areas unless prior permission has been obtained from the site manager.

14.1.16 Reverse parking shall be operated wherever practicable.

14.1.17 The Contractor shall ensure that only competent, licensed and authorised personnel are permitted to operate any vehicle.

14.1.18 All vehicles shall observe the site speed limits as indicated by local signage.

14.1.19 Vehicles left unattended shall be securely braked, the engine switched off and ignition keys removed.

14.1.20 Hand held mobile telephones shall not be used whilst any vehicle or plant is being operated.

14.1.21 Ladders shall only be used as a means of access or for very simple, short duration tasks.

14.1.22 Where ladders are used, they shall be of a suitable industrial standard, in good condition and subject to regular formal inspection.

14.1.23 The Contractor shall notify the Company immediately in the event of any accident, incident or “near miss” occurring in the performance of the Contract on the Company’s premises where that accident, incident or “near miss” causes, or may cause, any personal injury or damage to property which could give rise to personal injury.

14.1.24 The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to Health and Safety which may apply to staff in the performance of the Call Off Contract.

14.1.25 The Contractor shall ensure that his health and safety policy statement and health and safety management arrangements (as required by the Health and Safety at Work etc Act 1974) are made available to the Company on request.

**14.2 Data Protection**

14.2.1 The Contractor’s attention is drawn to the Data Protection Act 1998 (‘DPA’).

14.2.2 The Contractor shall comply with the Data Protection principles contained within DPA and shall observe any other obligation under DPA which arises in connection with this Dynamic Purchasing System Agreement.

14.2.3 In this condition “DPA” means the Data Protection Act 1998 and “Personal Data” means information defined as such in DPA which is supplied and /or processed by the Contractor on behalf of the Company.

14.2.3.1 The Company is the Data Controller and the Contractor is the Data Processor under DPA.

14.2.3.2 The Contractor shall maintain appropriate confidentiality and security arrangements in respect of Personal Data and must comply with the principles of DPA when processing Personal Data.

14.2.3.3 The Contractor shall ensure that Personal Data will:

1. be processed fairly and lawfully in accordance with the requirements of the first principle of DPA;
2. be processed only for the purpose of the provision of the service and will not be processed for any other purpose without the Company’s approval;
3. be adequate, relevant, and not excessive in relation to the purpose specified;
4. be accurate and, where necessary kept up to date;
5. be secured to prevent unauthorised or unlawful processing and to protect against loss destruction or damage;
6. be held for only as long as necessary to meet the purpose and shall be destroyed when the Company requires;
7. not to be transferred to any country outside the European Economic Area without the Company’s approval;
8. be processed in accordance with the rights afforded to individuals under DPA.

14.2.4 Under no circumstances shall the Contractor sell or give any personal data including e-mail addresses to any third party.

14.2.5 When the Personal Data is no longer needed for the Purpose:-

14.2.5.1 the Data Processor shall cease to access, use or process any of the Personal Data (and shall ensure that its permitted sub-contractors do likewise); and

14.2.5.2 the Data Processor will return all Personal Data and all other information belonging to the Company and which is provided or disclosed to the Data Processor for the Purpose and all copies of such Personal Data and information to the Company forthwith or, at the Company’s written instruction, will destroy all such Personal Data and information, together with any and all copies of all such Personal Data and information and certify in writing to the Company that it has done so, save to the extent that the Data Processor is prevented by law from destroying all or part of all such Personal Data and information, in which event the Data Processor undertakes that all such Personal Data and information will be kept confidential and will not be disclosed to any third party or used or processed for any purpose.

14.2.5.3 The Contractor shall indemnify and hold the Company harmless (and keep indemnified and hold harmless not withstanding termination of this Agreement) against any loss or damage suffered by the Company as a result of the Contractor's breach of this clause 14.

**14.3 Human Rights Act and Other Legislation**

14.3.1 The Contractor shall comply with all other relevant statutory and other provisions relating to the provision of the Services including (but without limitation) the Human Rights Act 1998.

**14.4 New Legislation**

14.4.1 Without prejudice to clauses 14.1 – 14.3, where new legislation is enacted during the Term which has the effect of changing the manner in which the Services or any part of them are to be provided the Contractor shall ensure that:

1. the Company Representative is informed of the nature and effect of such legislation and the changes necessitated by it in the Services;
2. the Services are provided in accordance with such legislation.

**14.5 Rights of Third Parties**

14.5.1 A person who is not a Party to this Dynamic Purchasing System Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Dynamic Purchasing System Agreement.

**14.6 Equal Opportunities**

14.6.1 The Contractors attention is drawn to the Equalities Act 2010 (‘the Act’)

14.6.2 The Contractor and any subcontractor employed by the Contractor shall adopt a policy to comply with the Act and any subsequent legislation in respect of equalities which may be enacted during the Contract Period (‘the Equalities Legislation’). Accordingly, the Contractor and any employee or subcontractor employed by the Contractor shall not discriminate directly or indirectly against any person because of their age, sex, disability, religion, beliefs, sexual orientation, gender reassignment, pregnancy, maternity or race.

14.6.3 In the event of any finding of unlawful discrimination being made against the Contractor or any Sub-contractor employed by the Contractor during the Contract Period by any court or industrial tribunal or in comparable proceedings in any other jurisdiction, or of an adverse finding in any formal investigation by the Commission for Racial Equality and/or any comparable statutory body relating to the Equalities Legislation over the same period, the Contractor shall inform the Company of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

14.6.4 The Contractor shall, on request, provide the Company with details of any steps taken under clause 14.6.3 above.

14.6.5 The Contractor shall comply with the Equalities Legislation and shall satisfy the Company that:-

1. its working practices do not involve the treatment of one group or individual less favourably than any others because of their age, sex, colour, race, nationality, ethnic origin, disability, religious beliefs or sexual orientation on any decision relating to their recruitment or employment with the Contractor and in relation to the delivery of the Services under this Agreement;
2. policies on discrimination are set out:-
   1. in instructions to those concerned with recruitment, training and promotion;
   2. in documents available to employees, recognised trade unions or other representative groups of employees;
   3. in recruitment advertisements or other literature
   4. in instructions to those concerned with the delivery of the Services.

14.6.6 The Contractor shall provide such information as the Company may reasonably request for the purpose of assessing the Contractor’s compliance with this clause 14.6.6 including, if requested, examples of any instructions or other documents, recruitment advertisements or other literature containing details of monitoring of recruitment and employees such information not to unreasonably withheld or delayed.

**14.7 Freedom of Information**

14.7.1 “FOI” means the Freedom of Information Act 2000, “Exempt Information” means information falling into the exemptions set out in the FOI, “Confidential Information” means information to which the confidentiality or commercial interests exemptions within the FOI may apply and “Working Day” means Monday to Friday inclusive except bank holidays.

14.7.1.1 The Company is bound by the provision of the FOI and information relating to this Contract may need to be disclosed to third parties in order for the Company to meet its obligations under the FOI.

14.7.1.2 The Contractor shall make all reasonable efforts to assist the Council in meeting its obligations under the FOI. If the Company receives an access request under the FOI, the Contractor shall upon request provide:

14.7.1.2.1 To the Company a copy of information requested which is held by the Contractor on behalf of the Company within a period of 5 Working Days;

14.7.1.2.2 Access to the Company Representative, within a period of 5 Working Days, to inspect information held by the Contractor on behalf of the Company.

14.7.1.3 Where it is necessary for the Contractor to provide information to the Company which it believes to be Exempt Information it shall state in writing to the Company the nature of the information and the relevant exemption. The Company will use reasonable endeavours to consult with the Contractor before disclosing such information under the FOI. The Contractor acknowledges that the final decision whether to disclose such information will rest with the Company and not with the Contractor. Nothing contained in this Contract or any documents or negotiations relating to this Contract shall prevent the Company from disclosing any information which (in the Company’s reasonable opinion or in accordance with any recommendation, notice or decision of a competent authority) it is required to disclose under FOI.

14.7.1.4 The Contractor shall observe the Company’s Retention and Destruction Policy (details of which shall be provided by the Company to the Contractor upon request) and shall not destroy information other than in accordance with this policy. If the Company notifies the Contractor of a request for information held by the Contraction which is due for destruction the Contractor shall immediately suspend destruction of that information to allow disclosure to take place. Upon the termination of this Contract the Parties shall agree with Party has the control of the retained information. Should the Contractor retain control of the information, this clause 7.7 shall remain in force beyond the termination of this Contract.

14.7.1.5 The Contractor shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed.

14.7.1.6 The Contractor shall indemnify the Company against all claims, demands, actions, costs, proceedings and liabilities that the Company directly incurs due to the Contractor’s or any sub-contractors breach of this clause 7.7 or any part of it.

**14.8 Confidentiality**

14.8.1 The Contractor shall keep confidential all information obtained from the Company or through its provision of the Services which is Confidential Information whether or not the Company designates or marks that Confidential Information as confidential.

14.8.2 The provisions of clauses 14.7.1 shall not apply to any information which:

1. is or becomes public knowledge (otherwise than by a breach of this clause 14.7.1);
2. was in the possession of the Party concerned without restriction as to its disclosure before receiving it from the other party; or
3. is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure.

14.8.3 Nothing in this clause shall prevent the Company or the Contractor from disclosing information under or in accordance with any legal requirement, or in accordance with any lawful requirements made by the Courts or by any regulatory body or inspectorate established by law.

14.8.4 The Contractor shall ensure that all employees engaged in the provision of the Services or otherwise with access to information relating to the Services will abide by this confidentiality clause.

14.8.5 The Contractor shall ensure that the terms of any sub-contract fully reflect the provisions of this clause 14.14.

1. **AGENCY**

15.1 The Contractor shall not represent itself as being: -

(a) the servant or agent of the Company (except as may be authorised under the Dynamic Purchasing System Agreement);

(b) authorised to enter into any contract or other obligation on the Company's behalf except as may be authorised under the Dynamic Purchasing System Agreement.

1. **WARRANTIES AND LIABILITY**

16.1 The Contractor warrants to the Company that it will provide the Services in accordance with the Specification and exercising such skill and care as is specified in clause 12 and in accordance with the Contract Standards and the terms of this Dynamic Purchasing System Agreement, the Order, the Call-Off Conditions and Special Conditions.

1. **INDEMNITY AND INSURANCE**
   1. The Contractor shall indemnify the Company against all actions, claims, damages, costs and other expenses in relation to the injury to, or death of, any person, and loss of, or damage to, any property, real or personal which is attributable to the negligent act or default of the Contractor or any breach of this Dynamic Purchasing System Agreement in connection with the provision of the Services
   2. The Contractor shall take out and maintain insurance against its liabilities under clause 17.1 for the minimum sum of £10 million in respect of any one incident.
   3. The Contractor must take out and maintain employer’s liability insurance in a minimum amount for each and every claim, act or occurrence or series of claims, acts or occurrences which complies with statutory requirements (which at the date of this Dynamic Purchasing System Agreement is £10 million).
   4. The Contractor shall supply to the Company on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with clause 17.2 – 3 inclusive.
2. **PAYMENT**
   1. The Company will pay the Contract Charges to the Contractor as detailed in the Call-Off Contract.
   2. Such payment shall be made by BACS wherever possible
   3. Unless expressly provided to the contrary in the Call-Off Contract no prices or charges additional to those specified in the Tender shall be payable by the Company to the Contractor for the Services. The Contract Charges are payable in pounds sterling and there shall be no increase attributable to any relevant currency exchange rate or for any other reason.
   4. The Contract Price is referred to in the Contract exclusive of VAT.
   5. If any sum of money shall be recoverable by the Company from the Contractor or payable by the Contractor to the Company pursuant to this Dynamic Purchasing System Agreement, the same may be deducted by the Company from any sum then due to the Contractor or which at any time may become due to the Contractor.
   6. Invoices shall be in such a form as may be agreed between the Company and the Contractor and the Company will pay the invoices within 30 days of receipt of an undisputed invoice.
   7. The Company reserves the right to vary its invoicing policy at any time and to require electronic invoices to be directly submitted by the Contractor. Any expenses of the Contractor involved in the submission of electronic invoices shall be met by the Contractor.
3. **VAT**
   1. The Company shall be liable to pay to the Contractor such Value Added Tax as may be properly chargeable by the Contractor in respect of the provision of the Services to the Company (except to the extent that any such Value Added Tax or related penalties are chargeable because of the breach by the Contractor of the relevant statutory provisions).
4. **LEGAL PROCEEDINGS AND DISCLOSURE OF RELEVANT INFORMATION**
   1. The Contractor shall notify the Company Representative of any accident, damage, claim or breach of any statutory provision relating to the supply of the provision of the Services as soon as reasonably possible after becoming aware of such matter.
   2. If required by the Company Representative, the Contractor shall provide relevant information and assistance in connection with any legal inquiry, arbitration, court proceedings or internal disciplinary proceedings relating to the provision of the Services and if required shall give evidence in such inquiries or proceedings or hearings.
   3. If at any time during the Contract Period the Contractor is convicted of any offence referred to in Regulation 57(1) of the Regulations or if an event occurs which would have entitled the Company to treat the Contractor as ineligible for selection under Regulation 57(8) of the Regulations then the Contractor shall immediately inform the Company of this fact and shall provide such further information as the Company may require.
5. **DISPUTE RESOLUTION**
   1. Any dispute or difference (in this clause ‘**the dispute**’) which arises between the Company and the Contractor as to the construction of this Dynamic Purchasing System Agreement, as to their respective rights, duties and obligations or as to any other matter arising out of or connected with the Dynamic Purchasing System Agreement shall be determined in accordance with the provisions of this clause.
   2. The parties shall attempt in good faith to negotiate a settlement to any Dispute between them arising out of or in connection with this Contract within twenty (20) working days of either party notifying the other of the Dispute and such efforts shall involve the escalation of the Dispute to the Company Representative and the Contract Manager.
   3. If the Dispute cannot be resolved pursuant to clause 21.2 it shall be referred to a relevant Director of the Company and an equivalent officer at the Contractor.
   4. If the Dispute cannot be resolved pursuant to clause 21.3 it shall be referred to the Managing Director of Yorwaste and the equivalent officer at the Contractor.
   5. If that parties are unable to reach an agreement following the escalation referred to in clause 21.2 to 21.4, the Company and the Contractor shall submit the dispute to a neutral adviser appointed by agreement between them to assist them in resolving the dispute. Either Party may give written notice to the other describing the nature of the dispute, requiring it to be submitted to such a neutral adviser and proposing the name of a suitable person to be appointed. If no such person is appointed by agreement within 14 days after such notice is given, or, if no such notice is given within 28 days after the dispute has arisen, either Party may request the Centre for Dispute Resolution to appoint a neutral adviser acceptable to both Parties.
   6. The Parties shall, with the assistance of the neutral adviser appointed in accordance with clause 21.1 and 21.2 above, seek to resolve the dispute by using an alternative dispute resolution (in this clause ‘**ADR**’) procedure agreed between the Parties or, in default of such agreement established by a mutual adviser.
   7. If the Parties accept any recommendations made by the neutral adviser or otherwise reach agreement as to the resolution of the dispute, such agreement shall be recorded in writing and signed by the Parties and, if applicable, the neutral adviser and it shall be binding upon both Parties.
   8. If: -
6. The dispute has not been resolved to the satisfaction of the Parties within 60 days after the appointment of the neutral adviser; or
7. Either Party fails or refuses to agree or participate in the ADR procedure; or
8. In any event the dispute is not resolved within 90 days after it has arisen

then the dispute shall be resolved under clause 21.6 below.

* 1. Any dispute which is to be resolved under this clause 21 shall be resolved by the decision of an expert whose decision shall, save as to manifest error, be final and binding on the Parties. The expert shall be appointed by agreement between the Parties or, if within ten days after the dispute fails to be resolved, the Parties have been unable to agree then on application of either of the Parties to the President for the time being of the Chartered Institute of Arbitrators.
  2. Any costs and fees incurred by the Parties which are not met in accordance with an agreement reached through the ADR procedure or in accordance with a decision reached by the expert under clause 21.6 above shall be borne by the Parties by whom they were incurred.

1. **TERMINATION**
   1. If the Contractor:-
2. has offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of this Dynamic Purchasing System Agreement or any other contract with the Company; or
3. has committed an offence under the Bribery Act 2010; or
4. becomes bankrupt; or
5. has a receiving order made against it; or
6. presents its petition in bankruptcy; or
7. is subject to a winding up order; or
8. has a receiver appointed; or
9. at any time during the Contract Period is convicted of any offence referred to in Regulation 57(1) of the Public Contracts Regulations 2012 or if an event occurs which would have entitled the Council to treat the Contractor as ineligible for selection under Regulation 57(8), or
10. is in persistent and/or material breach of contract (by failure to achieve the Contract Standards or otherwise); or
11. changes its composition on staffing so as seriously to affect its ability to provide the Services

the Company may terminate the Dynamic Purchasing System Agreement immediately and recover its losses resulting from such termination under clause 22.3 below.

* 1. The Company has relied on the information provided by the Contractor contained in the Tender and any material misrepresentation contained in the Tender shall entitle the Company to rescind or terminate this Dynamic Purchasing System Agreement at its option.
  2. If the Dynamic Purchasing System Agreement is terminated or rescinded under clause 22.1 or 22.2, the Company shall:

1. cease to be under any obligation to pay the Contract Charges until the costs of the termination have been calculated and provided such calculation then shows an amount due to the Contractor;
2. be entitled to reoccupy any premises and any other resources licensed or leased to the Contractor in connection with the Dynamic Purchasing System Agreement;
3. be entitled to use an alternative contractor to provide the Services or to do so itself;
4. be entitled, in respect of any costs directly resulting from the termination of the Dynamic Purchasing System Agreement, to deduct them from any amount which would have been due to the Contractor under this or any other contract with the Contractor or to recover them from the Contractor as a debt. Such costs shall include the reasonable costs of the Company in terminating the Dynamic Purchasing System Agreement and making alternative arrangements for the and provision of the Services;
5. when the total costs, resulting from the termination of the Dynamic Purchasing System Agreement have been calculated and after taking into account any deduction made by the Company from any sum which would (but for (a) above) have been due to the Contractor, be entitled to any balance due to the Company which shall be recoverable as a debt, or alternatively the Company, subject to clause 22.4, shall pay to the Contractor any balance due.
   1. The rights of the Company under this clause 22 are in addition to and without prejudice to any other rights or remedies the Company may have whether against the Contractor directly or pursuant to any guarantee or indemnity.
6. **NOTICES**

25.1 Notices under the Dynamic Purchasing System Agreement must be in writing and may be served by either fax, personal delivery or recorded delivery to the addresses referred to in the Dynamic Purchasing System Agreement.

1. **WAIVER**
   1. Failure by the Company to enforce the provisions of the Dynamic Purchasing System Agreement shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Dynamic Purchasing System Agreement or the right of the Company to enforce any provision in the Dynamic Purchasing System Agreement.
2. **COMPLAINTS PROCEDURE**
   1. The Contractor shall: -
      1. Draw up a complaints procedure.
      2. Operate it from the beginning of the Contract Period.
      3. At the Company’s request provide a copy to it.
   2. The complaints procedure must either:

25.2.1 Be approved by the Company (and the Company will not be unreasonable or delay in giving its approval); or

* + 1. Comply with the requirements of any regulatory body to which the Contractor is subject including any change in such requirements.

25.3 At the Company’s reasonable request the Contractor shall supply it with a copy of the Contractor’s records relating to complaints made in relation to the provision of the Services and the Contractor’s response.

1. **SATISFACTION SURVEYS**
   1. In order to assess the level of performance of the Contractor, the Company may undertake satisfaction surveys on an annual basis in respect of the Contractor's provision of the Services.
   2. The Company shall be entitled to notify the Contractor of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with the Dynamic Purchasing System.
   3. All other suggestions for improvements to the Services shall be dealt in the monthly quarterly meetings.
2. **SUSTAINABILITY**
   1. In providing the Services the Contractor shall meet the sustainability requirements set out in the Specification.
   2. The Contractor shall comply with the provisions of its environmental policy in relation to the provision of the Services.
   3. The Company shall monitor compliance with this clause 27.
   4. Throughout the Term the Contractor shall make all reasonable endeavours to reduce any negative impact on the environment caused by the provision of the Services. If during the Term the Contractor wishes to change any of the materials, technologies or working practices used in connection with the provision of the Services, the Contractor must notify the Company detailing the changes, any possible impact on the Contract Charges or the Contract Standards and must also include an evaluation of the environmental impact of the proposed changes. If the Company agrees to the variation the Contractor shall implement the changes in accordance with the Variation Clause. The application must define the proposed changes, indicate the impact on the Contract Charges or the Contract Standards and must contain an evaluation of the environmental impact of the proposed changes. If the Company agrees to the variation the Contractor shall be free to implement the proposed changes.
3. **BEST VALUE, PRICE REDUCTION AND TECHNOLOGICAL IMPROVEMENTS**
   1. The Company may from time to time review the provision of the Service in pursuance of the Company’s commitment to continuing service improvement, having regard to a combination of economy, efficiency and effectiveness and the Contractor shall: -
      1. Participate in and fully co-operate with such reviews; and
      2. Provide such assistance and information including, but without limitation, accounting and other record books, business plans, quality assurance, service records and service plans as may be reasonably required by the Company in relation to the provision of the Service.
   2. The Contractor shall at all times during the Term use all reasonable endeavours to ensure that the Company receives the benefit of improvements in the available technology and reduced third party costs and charges relevant to the provision of the Services (including, without limitation, endeavouring to source equipment and software from suppliers with competitive rates).
   3. Where the Contractor identifies such a potential benefit, it shall promptly inform the Company and shall advise the Company whether, in the Contractor's professional opinion, the implementation of any change necessary to enable the Company to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price).
   4. If the Company shall conclude that the implementation of the necessary change is desirable, the Contractor shall implement the change.
   5. Any benefits arising from any such change as is referred to in this clause 28 (including any consequent reductions in the Charges) shall accrue solely to the Company (subject to any costs reasonable incurred by the Contractor in implementing the necessary change being taken into account).
4. **ENTIRE AGREEMENT**
   1. This Dynamic Purchasing System Agreement including all Appendices and Schedules constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
   2. Each of the Parties acknowledges and agrees that in entering into this Dynamic Purchasing System Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Dynamic Purchasing System Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Dynamic Purchasing System Agreement.
   3. Nothing in this Clause 29 shall operate to exclude Fraud or fraudulent misrepresentation

**SCHEDULE 1**

**SPECIFICATION**

*[to be inserted on contract award]*

**SCHEDULE 2**

**CALL-OFF AWARD CRITERIA**

Contracts will be awarded to Contractors by way of further competition following the process set out in clause 6 of the Dynamic Purchasing System Agreement. When the Company has a specific requirement it will confirm to Contractors potential amount of tonnage available. Contractors will be invited to submit tenders for the requirement. Submitted tenders will be evaluated in accordance with the following criteria:

1. **Quality (Minimum 0%, maximum 40%)**

*The Company may choose to ask any of the questions asked in the original Invitation to Tender. The Company may also ask any question that it feels is relevant to the opportunity available.*

1. **Evaluation of price (Minimum 60%, maximum 100%)**

*The Company will ask for a price per tonne gate fee. As part of the evaluation, the Company will need to include its consequential costs in terms of haulage from its sites to the Delivery Point.*

* 1. The Company will then select from across the range of tenders submitted a combination of capacity and price that provides the lowest overall price solution.

**SCHEDULE 3**

**ORDER FORM**

***[the final form of Order Form will be inserted prior to any further competition]***

**SCHEDULE 4**

**CALL-OFF CONDITIONS AND SPECIAL CONDITIONS**

[To be completed on award of a call-off contract]

**CONTENTS**

1. Definitions and Interpretation

2. The Contract - General

3. Company Representative

4. The Contractor's Obligations

5. Contractor's Staff

6. Contract Manager

7. Variations

8. Health and Safety, Data Protection and Other Statutory Requirements

[9. Agency](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885478)

[10. Indemnity and Insurance](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885479)

[11. Use of Contracting Authoity Premises](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885480)

[12. Security](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885481)

[13. Payment](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885482)

[14. VAT](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885483)

[15. Assignment and Sub-Contracting](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885484)

[16. Legal Proceedings and Disclosure of Relevant Information](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885485)

[17. Best Value](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885489)

[18. Dispute Resolution](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885490)

[19. Termination](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885491)

[20. Recovery of Sums Due to the Council](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885492)

[21. Notices](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885493)

[22. Waiver](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885494)

[23. Default](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885495)

[24. Complaints Procedure](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885498)

[25. DBS Checking](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885499)

[26. Sustainability](file:///C:\Users\cmmoore\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\9HSRXSK0\Disposal%20and%20composting%20Waste%20Contract%202015%20clean%20(3).doc#_Toc365885500)

27. Monitoring of Call Off Contract Performance

28. Force Majeure

Appendix 1 – Special Conditions

1. Definitions and Interpretation
   1. The following terms have the following meanings in the Call Off Contract: -

**Affected Party** the Party seeking to claim relief in respect of a Force Majeure Event

**Company Representative** the Company Representative referred to in Condition 3

**Call Off Conditions** these conditions

**Call Off Contract** this legally binding agreement (made pursuant to the provisions of the Dynamic Purchasing System Agreement) for the provision of Services made between the Company and the Contractor comprising:

(i) the Order;

(ii) the Call-Off Conditions;

(iii) any Special Conditions; and

(iv) answers to clarification questions during the further competition process

**Commencement Date** [DATE]

**Company** Yorwaste Limited

**Confidential Information** any information which has been designated as confidential by either party in writing or ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to secrets, intellectual property rights and all personal data and sensitive data within the meaning of the Data Protection Act 1998

**Contract Charges** the charges payable by the Company to the Contractor for the Service as set out in the Order

**Contract Documents** the contract documents referred to in the Call Off Contract

**Contract Manager** the Contract Manager referred to in Clause 5

**Contract Period** the period of the Call Off Contract as set out in the Order Form

**Contract Standards** i) the KPI’s

ii) the standards in the Call Off Contract; and

iii) with all the skill, care and diligence to be expected of a competent provider of services of a similar kind to the Service; and

iv) generally to the Company’s satisfaction

**Contractor** the contractor who has been appointed under the Dynamic Purchasing System Agreement and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the Contractor is a consortium or consortium leader, the consortium members;

**Force Majeure Event** means any event, occurrence or cause affecting the performance by either the Company or the Contract of its obligations arising from:

1. acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
2. riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
3. acts of government, local government or Regulatory Bodies;
4. fire, flood or any disaster acts, events, omissions, happening or non-happenings beyond the reasonable control of the Affected Party;
5. an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
6. any industrial dispute relating to the Contractor, the Contractor’s staff or any other failure in the Contractor or their sub-contractor’s supply chain; and
7. any event or occurrence which is attributable to a wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned.

**Dynamic Purchasing System** the legally binding agreement dated [DATE]

**Agreement** including all Schedules to the Agreement, the

Invitation to Tender and the Tender.

**Invitation to Tender** the Company’s invitation to tender for the Services including all the attached Schedules

**KPI’s** the key performance indicators set out in paragraph 9 of the Specification

**Order** the Company’s order for the provision of the Services

**Request to Participate** the Contractor's request to participate for the Service

**Service** the service to be provided under the Call Off Contract

**Special Conditions** any terms or conditions included by the Company in the Call-Off Conditions and set out in Appendix 1

**Specification** the Specification forming part of the Dynamic Purchasing System Agreement

* 1. The Call Off Contract shall be governed by English Law.
  2. References to: -
     1. any Act, Order, Regulation, Statutory Instrument, etc, include any amendment or re-enactment.
     2. one gender include any other gender
     3. persons include corporations
     4. singular includes the plural
     5. clauses are to clauses in the Call Off Contract
     6. the Contractor's staff include the Contractor's partners, directors, employees, agents and subcontractors.

1. The Call Off Contract - General
   1. This Call-Off Contract is made pursuant to the Dynamic Purchasing System Agreement.
   2. In the event of, and only to the extent of, any conflict between the terms and conditions of the Dynamic Purchasing System Agreement, the Order, the Call-Off Conditions and any Special Conditions, the application of the clauses shall prevail in the following order:
2. Dynamic Purchasing System Agreement
3. Order
4. Call-Off Conditions
5. Special Conditions
6. Company Representative
   1. The Company Representative is the person nominated by the Company to act on its behalf for the purposes of the Contract and may:
      1. issue instructions to the Contractor on any matter relating to the Call Off Contract; and
      2. appoint representatives to act upon his behalf and shall notify the Contractor of such appointment(s).
7. The Contractor's Obligations
   1. The Contractor shall provide the Service in accordance with the Call Off Contract for the Contract Period to the Contract Standards.
   2. The Contractor shall inform the Company Representative immediately if it is unable to provide the Service or if the Contractor is aware of anything which may prevent the Contractor from complying with the Call Off Contract.
   3. To enable the Company Representative to monitor the provision of the Service the Contractor authorises access by him to:
      1. the Contractor's work place
      2. relevant records and documents held by the Contractor in connection with the Service
      3. the Contractor's staff
      4. technology, resources and systems used or proposed to be used in connection with the Service.
   4. Without prejudice to the Company’s other powers under the Call Off Contract, if the Contractor fails to provide the Service in accordance with Clause 3, the Company may provide the Service itself or may pay another firm to provide part or all of the Service and the costs incurred may be deducted from the Contract Charges or shall be recoverable as a debt.
   5. If requested by the Company Representative the Contractor shall provide a copy of its audited accounts within six months of the relevant accounting reference date subsequent to those provided in accordance with the Tender.
8. Contractor's Staff
   1. The Contractor shall employ sufficient staff to ensure that the Service is provided to the Contract Standards.
   2. The Contractor's staff shall be adequately qualified, competent and suitable in all other respects to provide the Service.
   3. The Company Representative may reasonably require the Contractor in writing to remove from the provision of the Service any member of the Contractor's staff. The Contractor shall immediately remove such staff from the provision of the Service and provide a replacement.
   4. The Company shall not be liable either to the Contractor or to the staff in question in respect of any cost, expenses, liability, loss or damage occasioned by such removal and the Contractor shall indemnify the Company in respect of any claim made.
9. Contract Manager
   1. The Contractor shall appoint a Contract Manager approved by the Company. Any notice, instruction or other information given to the Contract Manager shall be deemed to have been given to the Contractor.
   2. The Contractor shall notify the Company Representative in writing of the name, address and contact numbers of the Contract Manager and any deputy.
   3. The Contractor shall provide and shall ensure that its staff wear at all times, when engaged in the provision of the Service on Company premises such identification as the Company may require.
10. Variations
    1. The Company Representative may require the Contractor in writing to:-
       1. provide additional services of a similar nature to the Service;
       2. increase or decrease the scope of the Service or any part of it;
    2. The valuation of variations made under this clause shall be calculated by the Company Representative as follows:-
       1. wherever appropriate the valuation shall be ascertained in accordance with the principles used and the rates and prices contained in the Tender;
       2. if the rates and prices in the Tender are not relevant to the variation then the ascertainment of the valuation shall be on a fair and reasonable basis agreed by the parties and if agreement is not possible the matter shall be referred for dispute resolution under Clause 19.
11. Health and Safety, Data Protection and Other Statutory Requirements
    1. **Health and Safety**
       1. The Contractor shall comply with the requirements of the Health and Safety at Work Act 1974 so far as they apply to the provision of the Service and throughout the Contract Period the Contractor shall have in place a health and safety policy which complies with all statutory requirements.
       2. The Contractor shall promptly notify the Company of any health and safety hazards which may arise in connection with the performance of the Contract.
       3. The Company shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Company’s premises and which may affect the Contractor in the performance of the Contract.
       4. While on the Company premises, the Contractor shall comply with any health and safety measures implemented by the Company in respect of personnel and other persons working on those premises.
       5. The Contractor shall notify the Company immediately in the event of any incident or “near miss” occurring in the performance of the Contract on the Company’s premises where that incident or “near miss” causes, or may cause, any personal injury or damage to property which could give rise to personal injury.
       6. The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to Health and Safety which may apply to staff in the performance of the Call Off Contract.
       7. The Contractor shall ensure that his health and safety policy statement and health and safety management arrangements (as required by the Health and Safety at Work etc Act 1974) are made available to the Company on request.
    2. **Data Protection**
       1. In this clause “DPA” means the Data Protection Act 1998 and “Personal Data” means information defined as such in DPA which is supplied and/or processed by the Contractor on behalf of the Company.
       2. The Contractor shall comply with the Data Protection principles contained within DPA and shall observe any other obligation under DPA which arises in connection with this Contract.
       3. The Company is the Data Controller and the Contractor is the Data Processor under DPA.
       4. The Contractor shall maintain appropriate confidentiality and security arrangements in respect of Personal Data and must comply with the principles of DPA when processing that Personal Data.
       5. The Contractor shall ensure that Personal Data will: -
          1. be processed fairly and lawfully in accordance with the requirements of the first principle of DPA;
          2. be processed only for the purpose of the provision of the Service and will not be processed for any other purpose without the Company’s approval;
          3. be adequate, relevant and not excessive in relation to the purpose specified;
          4. be accurate and, where necessary, kept up to date;
          5. be secured to prevent unauthorised or unlawful processing and to protect against loss, destruction or damage;
          6. be held for only as long as necessary to meet the purpose
          7. not to be transferred to any country outside the European Economic Area without the Company’s approval;
          8. be processed in accordance with the rights afforded to individuals under DPA
       6. The Contractor shall ensure that its staff, agents or subcontractor who have access to the Company’s data comply with the requirements in this clause and shall ensure that such employees, agents or subcontractor receive appropriate data protection training and understand the responsibilities under the DPA in respect of Personal Data.
       7. If the Contractor receives any subject request for Personal Data such request will be referred to the Company’s Data Protection Officer as soon as practicable after receipt.
       8. If the Contractor sub-contracts any part of the Service then the Contractor shall ensure that any subcontractor or other arrangement with any such subcontractor shall include a binding legal obligation upon the subcontractor to comply with the obligations set out in this clause. For the avoidance of doubt such sub-contracting shall not relieve the Contractor of its obligation to comply with this clause.
       9. The Contractor shall be liable for and shall indemnify the Company against all claims, demands, actions, costs, proceedings and liabilities of any sort which the Company incurs due to the Contractor’s or any subcontractors breach of this clause.
       10. The Contractor shall provide to the Company on request evidence of its compliance with this clause to the Company’s reasonable satisfaction.
       11. The Company shall monitor compliance with the clause and non-compliance may constitute a ground for termination of the Contract.
       12. The obligations set out in this clause shall remain in force notwithstanding termination of the Call Off Contract.
    3. **Other Legislation** 
       1. The Contractor shall comply with all relevant statutory and other provisions relating to the Service.
    4. **New Legislation**
       1. Without prejudice to clause 8.1 – 8.3, where new legislation is enacted during the Contract Period which has the effect of changing the manner in which the Service or any part of it is to be provided the Contractor shall ensure that:
          1. the Company Representative is informed of the nature and effect of such legislation and the changes necessitated by it in the Service;
          2. the Service is provided in accordance with such legislation.
    5. **Rights of Third Parties**
       1. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
    6. **Equal Opportunities**
       1. The Contractors attention is drawn to the Equality Act 2010 (‘the Act’)
       2. The Contractor and any subcontractor employed by the Contractor shall adopt a policy to comply with the Act and any subsequent legislation in respect of equalities which may be enacted during the Contract Period (‘the Equalities Legislation’). Accordingly, the Contractor and any employee or subcontractor employed by the Contractor shall not discriminate directly or indirectly against any person because of their age, sex, disability, religion, beliefs, sexual orientation, gender reassignment, pregnancy, maternity or race.
       3. The Contractor and any sub-contractor employed by it shall observe as far as possible, all statutory codes relating to the Equalities Legislation. These give practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment, including monitoring of workforce matters and steps that can be taken to encourage people from minority groups to apply for jobs or take up training opportunities.
       4. In the event of any finding of unlawful discrimination being made against the Contractor or any subcontractor employed by the Contractor during the contract period by any court or industrial tribunal or in comparable proceedings in any other jurisdiction, or of an adverse finding in any formal investigation by the Equalities and Human Rights Commission and/or any comparable statutory body relating to the Equalities Legislation over the same period the Contractor shall inform the Company of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.
       5. The Contractor shall, on request, provide the Company with details of any steps taken under Condition 8.6.4 above.
       6. The Contractor shall comply with the Equalities Legislation and shall satisfy the Company that:-
          1. its working practices do not involve the treatment of one group or individual less favourably than any others because of their age, sex, colour, race, nationality, ethnic origin, disability, religious beliefs or sexual orientation on any decision relating to their recruitment or employment with the Contractor and in relation to the delivery of the Services under this Agreement;
          2. policies on discrimination are set out:-

1. in instructions to those concerned with recruitment, training and promotion;
2. in documents available to employees, recognised trade unions or other representative groups of employees;
3. in recruitment advertisements or other literature
4. in instructions to those concerned with the delivery of the Services.
   * 1. The Contractor shall provide such information as the Company may reasonably request for the purpose of assessing the Contractor’s compliance with this clause 8.6 including, if requested, examples of any instructions or other documents, recruitment advertisements or other literature containing details of monitoring of recruitment and employees.
   1. **Confidentiality**
      1. Each party shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly subject to any statutory, legal or parliamentary obligation placed upon the Company.
      2. The Contractor shall keep confidential all information obtained from the Company or through its provision of the Service which is Confidential Information whether or not the Company designates or marks that Confidential Information as confidential.
      3. The Contractor shall not use any Confidential Information it receives from the Company otherwise than for the purposes of this Call Off Contract.
      4. Notwithstanding any other term of this Call Off Contract, the Contractor hereby gives his consent for the Company to publish the Call Off Contract in its entirety, including from time to time agreed changes to the Call Off Contract, to the general public.
5. Agency
   1. The Contractor shall not represent itself as being: -
      1. the servant or agent of the Company (except as may be authorised under the Call Off Contract);
      2. authorised to enter into any contract or other obligation on the Company's behalf except as may be authorised under the Contract
6. Indemnity and Insurance
   1. The Contractor shall indemnify the Company against all actions, claims, damages, costs and other expenses in relation to the injury to, or death of, any person, and loss of, or damage to, any property, real or personal which is attributable to the negligent act or default of the Contractor in connection with the Service.
   2. The Contractor shall take out and maintain insurance against its liabilities under clause 10.1 for the minimum sum of £10 million in respect of any one incident.
   3. The Contractor shall take out and maintain employer’s liability insurance in a minimum amount for each and every claim, act or occurrence or series of claims, acts or occurrences which complies with statutory requirements (which at the date of this Call Off Contract is £10 million).
   4. The Contractor shall supply to the Company on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with clauses 10.2 – 3 inclusive.
7. Use of Company Premises
   1. The Contractor shall not carry out any work at any premises owned or occupied by the Company (including any premises leased by the Company to the Contractor) other than the Service or acts, incidental to it.
8. Security
   1. The Contractor shall comply with the Company’s security procedures at Company premises used or occupied by the Contractor in connection with the Service.
   2. The Contractor shall use its best endeavours to ensure that access to any such premises is restricted to its staff and essential visitors.
   3. The Contractor shall issue to its staff who have access to any relevant premises security passes in such form as the Company may require.
   4. The Contractor shall be responsible for the safekeeping of any keys, passes and other means of access provided by the Company and shall only permit them to be given to the staff whose names and addresses have been supplied to the Company and then only to the extent required for the purposes of providing the Service. The Contractor shall ensure that the Company Representative is informed immediately of the loss of any keys, passes and other means of access and shall pay the cost of replacement and/or any reasonable security measures implemented as a result of such loss.
9. Payment
   1. The Company will pay the Contract Charges by monthly payments in arrears. Such payment shall be made by BACS wherever possible.
   2. All accounting periods other than the first and last shall begin on the first and end on the last day of each calendar month during the Contact Period (“Accounting Period”).
   3. The first accounting period shall begin on the Commencement Date and end on the last day of the calendar month following the Commencement Date.
   4. The last accounting period shall begin on the first day of the calendar month preceding the month in which the Contract Period expires and end on the date of termination or expiration.
   5. Within 7 days (excluding Bank Holidays and weekends) following the end of each Accounting Period the Contractor shall submit to the Company Representative an invoice in respect of the Service provided during the Accounting Period. All invoices shall be supplied with backing information sufficient to confirm the accuracy of the claim. The Contractor shall be paid the amounts due not later than 28 days following the end of the Accounting Period or receipt of the invoice (whichever is the later) except in the case of disputed invoices. Interest on Late Payments will be made at a rate of 2% per annum above the UK base rate calculated on a daily basis.
   6. In the case of a disputed invoice the Company Representative will notify the Contractor. Interest will be payable in accordance with clause 13.5 above after 28 days of the receipt of a disputed invoice if the Company fails to notify the Contractor within 14 days of its receipt of the reason for the dispute. Failure to notify the Contractor of a disputed invoice within such period of 14 days shall not prejudice the Company’s right subsequently to dispute such invoice.
   7. Where a disputed invoice is resolved, in the case of the invoice being accepted by the Company as correct, the Company shall pay the invoice within 14 days of the resolution of the dispute or within the original 28 day period, whichever is the later. Where the disputed invoice is accepted as incorrect by the Contractor, the Contractor shall issue a credit note or additional invoice for the relevant amount and the balance of the invoice shall be paid within 28 days of receipt of the credit note or additional invoice, or the original 28 day period, whichever is the later.
   8. Where the Contractor is registered for VAT, all invoices and credit notes shall comply with all VAT legislation and regulations.
   9. The Contractor shall provide the Company Representative with such details as to VAT and, where applicable, Landfill Tax as the Company may from time to time require. The Contractor shall comply with all Customs and Excise Regulations relating to the Service. All VAT and Landfill Tax charged shall be at the statutory rate.
   10. The overall remedy for late payment by either party is a substantial remedy within the meaning of Part II of the Late Payment of Commercial Debts (Interest) Act 1998. This term is not imposed by either party to the detriment of the other and the Contractor does not receive any inducement to agree to this term.
   11. For the avoidance of doubt, the Contractor shall only be entitled, at the most, to such monies as are shown on the submitted accounts, and in respect of services actually supplied to the Company by the Contractor or on its behalf.
   12. The Company reserves the right to vary its invoicing policy at any time and to require electronic invoices to be directly submitted by the Contractor. Any expenses of the Contractor involved in the submission of electronic invoices shall be met by the Contractor.
   13. Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Call Off Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
10. VAT
    1. The Company shall be liable to pay to the Contractor such Value Added Tax as may be properly chargeable on the Contractor in respect of the supply of the Service to the Company (except to the extent that any such Value Added Tax or related penalties are chargeable because of the breach by the Contractor of the relevant statutory provisions).
11. Assignment and Sub-Contracting
    1. The Company shall be entitled to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to any other body (including any private or public sector body) which substantially performs any of the function that previously had been performed by the Company provided that such assignment, novation or disposal shall not increase the burden of the Contractor’s obligations under the Contract.
    2. The Contractor shall not:
       1. assign the Call Off Contract in whole or in part;
       2. sub-contract the provision of the Service in whole or in part without the previous written consent of the Company Representative which shall not relieve the Contractor from any liability under the Call Off Contract. The Contractor shall be responsible for the acts, defaults or neglect of any subcontractors, as if they were the acts, defaults or neglect of the Contractor.
    3. Where the Company has agreed that the provision of the Service may be sub contracted in whole or in part then the Contractor shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the subcontractor within a specified period not exceeding 30 days from the receipt of a valid invoice. In addition, any contract between the Contractor and any sub-contractor, conditions of contract shall be included which replicate clauses 15.1 and 15.2 above together with such other provisions which the Company may from time to time specify shall be included in any such sub contract.
12. Legal Proceedings and Disclosure of Relevant Information
    1. The Contractor shall notify the Company Representative of any accident, damage, claim or breach of any statutory provision relating to the Service as soon as reasonably possible after becoming aware of such matter.
    2. If required by the Company Representative, the Contractor shall provide relevant information and assistance in connection with any legal inquiry, arbitration, court proceedings or internal disciplinary proceedings relating to the Service and if required shall give evidence in such inquiries or proceedings or hearings.
    3. If at any time during the Contract Period the Contractor is convicted of any offence referred to in Regulation 57(1) of the Public Contracts Regulations 2015 (in this clause ‘the Regulations’) or if an event occurs which would have entitled the Company to treat the Contractor as ineligible for selection under Regulation 57(8) of the Regulations then the Contractor shall immediately inform the Company of this fact and shall provide such further information as the Company may require.
13. Best Value
    1. The Company may from time to time review the Service in pursuance of the Company’s commitment to continuing Service improvement, having regard to a combination of economy, efficiency and effectiveness and the Contractor shall: -
       1. participate in and fully co-operate with such reviews; and
       2. provide such assistance and information including, but without limitation, accounting and other record books, business plans, quality assurance, service records and service plans as may be reasonably required by the Company in relation to the Service.
14. Dispute Resolution
    1. Any dispute or difference (in this clause ‘the dispute’) which arises between the Company and the Contractor as to the construction of this Call Off Contract, as to their respective rights, duties and obligations or as to any other matter arising out of or connected with the Call Off Contract shall be determined in accordance with the provisions of this clause.
    2. The parties shall attempt in good faith to negotiate a settlement to any Dispute between them arising out of or in connection with this Contract within twenty (20) working days of either part notifying the other of the Dispute and such efforts shall involve the escalation of the Dispute to the Company Representative and the Contract Manager.
    3. If the Dispute cannot be resolved pursuant to clause 18.2 it shall be referred to a relevant Director of the company an equivalent officer at the Contractor.
    4. If the Dispute cannot be resolved pursuant to clause 18.3 it shall be referred to the Managing Director of Yorwaste and the equivalent officer at the Contractor.
    5. If the parties are unable to reach an agreement following the escalations referred to in clause 18.2 to 18.4, the Company and the Contractor shall submit the dispute to a neutral adviser appointed by agreement between them to assist them in resolving the dispute. Either party may give written notice to the other describing the nature of the dispute, requiring it to be submitted to such a neutral adviser and proposing the name of a suitable person to be appointed. If no such person is appointed by agreement within 14 days after such notice is given, or, if no such notice is given within 28 days after the dispute has arisen, either party may request the Centre for Dispute Resolution to appoint a neutral adviser acceptable to both parties.
    6. The parties shall, with the assistance of the neutral adviser appointed in accordance with clause 18.2 above, seek to resolve the dispute by using an alternative dispute resolution (in this clause ‘ADR’) procedure agreed between the parties or, in default of such agreement established by a mutual adviser.
    7. If the parties accept any recommendations made by the neutral adviser or otherwise reach agreement as to the resolution of the dispute, such agreement shall be recorded in writing and signed by the parties and, if applicable, the neutral adviser and it shall be binding upon both parties.
    8. If: -
       1. the dispute has not been resolved to the satisfaction of the parties within 60 days after the appointment of the neutral adviser; or
       2. either party fails or refuses to agree or participate in the ADR procedure; or
       3. in any event the dispute is not resolved within 90 days after it has arisen

then the dispute shall be resolved under clause 18.6 below.

* 1. Any dispute which is to be resolved under this clause shall be resolved by the decision of an expert whose decision shall, save as to manifest error, be final and binding on the parties. The expert shall be appointed by agreement between the parties or, if within ten days after the dispute fails to be resolved, the parties have been unable to agree then on application of either of the parties to the President for the time being of the Chartered Institute of Arbitrators.
  2. Any costs and fees incurred by the parties which are not met in accordance with an agreement reached through the ADR procedure or in accordance with a decision reached by the expert under clause 18.6 above shall be borne by the parties by whom they were incurred.

1. Termination
   1. If the Contractor:-
      1. has offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of this Call Off Contract or any other contract with the Company; or
      2. has committed an offence under the Bribery Act 2010; or
      3. becomes bankrupt; or
      4. has a receiving order made against it; or
      5. presents its petition in bankruptcy; or
      6. is subject to a winding up order; or
      7. has a receiver appointed; or
      8. At any time during the contract period is convicted of any offence referred to in Regulation 57(1) of the Public Contracts Regulations 2015 or if an event occurs which would have entitled the Company to treat the Contractor as ineligible for selection under Regulation 57(8), or
      9. is in persistent and/or material breach of contract (by failure to achieve the Contract Standards or otherwise); or
      10. changes its composition on staffing so as seriously to affect its ability to provide the Service; or

the Company may terminate the Call Off Contract immediately and recover its losses resulting from such termination under clause 19.3 below.

* 1. The Company has relied on the information provided by the Contractor contained in the Tender and any material misrepresentation contained in the Tender shall entitle the Company to rescind or terminate this Call Off Contract at its option.
  2. If the Call Off Contract is terminated or rescinded under clause 19.1 or 19.2, the Company shall:
     1. cease to be under any obligation to pay the Contract Charges until the costs of the termination have been calculated and provided such calculation then shows an amount due to the Contractor;
     2. be entitled to reoccupy any premises and any other resources licensed or leased to the Contractor in connection with the Call Off Contract;
     3. be entitled to use an alternative contractor to provide the Service or to provide it itself;
     4. be entitled, in respect of any costs directly resulting from the termination of the Call Off Contract, to deduct them from any amount which would have been due to the Contractor under this or any other contract with the Contractor or to recover them from the Contractor as a debt. Such costs shall include the reasonable costs of the Company in terminating the Call Off Contract and making alternative arrangements for the Service;
     5. when the total costs, resulting from the termination of the Call Off Contract have been calculated and after taking into account any deduction made by the Company from any sum which would (but for (a) above) have been due to the Contractor, be entitled to any balance due to the Company which shall be recoverable as a debt, or alternatively the Company, subject to clause 20, shall pay to the Contractor any balance due.
  3. The rights of the Company under clause 19 are in addition to and without prejudice to any other rights or remedies the Company may have whether against the Contractor directly or pursuant to any guarantee or indemnity.

1. Recovery of Sums Due to the Company
   1. If any amount is payable by the Contractor to the Company they may be deducted from the Contract Charges or any amount payable under any other contract with the Company.
2. Notices
   1. Notices under the Call Off Contract must be in writing and may be served by either fax, personal delivery or recorded delivery to the addresses referred to in the Call Off Contract.
3. Waiver
   1. Failure by the Company to enforce the provisions of the Call Off Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Call Off Contract or the right of the Company to enforce any provision in the Call Off Contract.
4. Default
   1. If the Contractor has defaulted in the provision of the Service (whether through failure to adhere to the Contract Standards or otherwise) and the Company has either suffered a direct loss in consequence and/or the reputation of the Company has been, or is likely to be, adversely affected then the Company may, without prejudice to any other remedy available to it, either:
      1. make such deduction from the Contract Charges(if payable) as the Company may reasonably determine by way of compensation; or
      2. without terminating the Call Off Contract itself provide or arrange for the provision of the Service or any part of it until such time as the Contractor has satisfied the Company that the Contractor is able to provide the Service or the relevant part of it to the Contract Standard and during such period the Contractor's provision of the Service in whole or in part shall be suspended; or
      3. without terminating the whole of the Call Off Contract determine the Call Off Contract in respect of part of the Service and provide or arrange to be provided such part of the Service itself or by a third party; or
      4. determine the whole Call Off Contract.
   2. The Company may charge the Contractor any cost reasonably incurred by it together with any reasonable administration costs in respect of the provision of the Service in whole or in part by itself or by a third party to the extent that such costs exceed the relevant Contract Charges.
   3. Where the failure to reach the Contract Standard is capable of remedy by the Contractor then the Company may require the Contractor at its own cost to remedy the failure and for the avoidance of doubt a failure to perform includes a failure to remedy.
5. Complaints Procedure
   1. The Contractor shall: -
      1. draw up a complaints procedure.
      2. operate it from the beginning of the Contract Period.
      3. at the Company’s request provide a copy to it.
   2. The complaints procedure must either: -
      1. be approved by the Company (and the Company will not be unreasonable or delay in giving its approval); or
      2. comply with the requirements of any regulatory body to which the Contractor is subject including any change in such requirements.
   3. At the Company’s reasonable request the Contractor shall supply it with a copy of the Contractor’s records relating to complaints made in relation to the Service and the Contractor’s response.
6. DBS Checking
   1. The Contractor shall carry out all necessary checks with the Disclosure and Barring Service on all staff employed or (if any) volunteers engaged to provide or supervise the provision of the Service if this is a statutory requirement.
7. Sustainability
   1. In providing the Services the Contractor shall meet the sustainability requirements set out in the Specification.
   2. The Contractor shall comply with the provisions of its environmental policy in relation to the provisions of the Service.
   3. The Company shall monitor compliance with this clause and the provisions of clause 4.4 will apply.
   4. Throughout the Contract Period the Contractor shall make all reasonable endeavours to reduce any negative impact on the environment caused by the Service. If during the Contract Period the Contractor wishes to change any of the materials, technologies or working practices used in connection with the Service, the Contractor must notify the Company detailing the changes, any possible impact on the Contract Charges or the Contract Standards and must also include an evaluation of the environmental impact of the proposed changes. If the Company agrees to the variation the Contractor shall implement the changes in accordance with the Variation clause. The application must define the proposed changes, indicate the impact on the Contract Charges or the Contract Standards and must contain an evaluation of the environmental impact of the proposed changes. If the Company agrees to the variation the Contractor shall be free to implement the proposed changes.
8. Monitoring of Call Off Contract Performance
   1. The Contractor shall comply with the monitoring arrangements set out in this clause 27 including, but not limited to, providing such data and information as the Contractor may be required to produce under this Call Off Contract.
   2. Within 20 working days of the Commencement Date the Contractor shall provide the Company with details of the system that it will implement in order to monitor and report on KPI performance ("Performance Monitoring System") and the Parties will endeavour to agree such process as soon as reasonably possible. The Contractor agrees that, as a minimum the reports generated as part of the Performance Monitoring System ("Performance Monitoring Reports”) shall contain, as a minimum, the following information in respect of the relevant period just ended:
      1. for each KPI, the actual performance achieved over the KPI for the relevant period;
      2. a summary of all failures to achieve KPI’s that occurred during that period;
      3. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence; and
      4. such other details as the Company may reasonably require from time to time.
   3. Once agreed, the Contractor shall comply with the Performance Monitoring System.
   4. The Performance Monitoring Reports shall be submitted by the Contractor at such time and in such form as may be specified or as otherwise agreed between the Parties.

* 1. The submission and receipt of the Performance Monitoring Reports shall not prejudice the rights of either Party under the Call Off Contract.
  2. The Parties shall attend meetings to discuss KPI reports ("Performance Review Meetings") on a quarterly basis throughout the Contract Period or at a frequency to be agreed between the Parties. The Performance Review Meetings will be the forum for the review by the Contractor and the Company of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
     1. take place within one (1) week of the Performance Monitoring Reports being issued by the Contractor;
     2. take place at such location and time (within normal business hours) as the Company shall reasonably require unless otherwise agreed in advance;
     3. be attended by the Contract Manager and the Company Representative; and
     4. be fully minuted by the Contractor. The prepared minutes will be circulated by the Contractor to all attendees at the relevant meeting and also to the Company's representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Contract Manager and the Company Representative at each meeting.
  3. The Company shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve the KPI’s.
  4. The Contractor shall provide to the Company such supporting documentation as the Company may reasonably require in order to verify the level of the performance by the Contractor.
  5. The Contractor shall meet with the Company following completion of significant elements of the Services (including, but not limited to, specific projects) to discuss whether the Parties' objectives were met, whether anticipated benefits had been achieved and to identify any lessons learned for future projects.

1. **Force Majeure**
   1. Subject to the remaining provisions of this clause 28, either Party to this Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
   2. A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
   3. An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person’s obligations under a contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
   4. The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The Notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
   5. As soon as practicable following the Affected Party’s notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
   6. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

**APPENDIX 1**

**SPECIAL CONDITIONS**

***[to be inserted upon the conduct of a further competition in accordance with clause 6]***