Request to Participate for Third Party Bulk Haulage

**Contract Ref. YOR/TFR/003**

Issue Date: 14th November 2016

Closing Date & Time: 14th December 2016 at 12 Noon

|  |  |
| --- | --- |
| Yorwaste Limited  Mount View  Standard Way  Northallerton  DL6 2YD | SJB Recycling  Bretton Mill Farm  Haigh  Barnsley  S75 4BX |

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# INFORMATION AND INSTRUCTIONS FOR SUPPLIERS

* 1. **OVERVIEW**
     1. Yorwaste Ltd and SJB Recycling (“the Company”) are waste management and recycling companies based and operating in Yorkshire. Yorwaste Ltd is owned by North Yorkshire County Council and City of York Council but is run at arms-length. Yorwaste Ltd has undergone major changes in the last 12 months and now has a new strategic direction, namely:
        1. From 2017, commercial municipal (non-recyclable) waste collected by Yorwaste will be taken to the new energy from waste plant at Allerton Park.
        2. Recyclables, such as plastic, cans and glass bottles, collected from commercial customers or processed on behalf of local authorities (from domestic kerbside schemes) will be sent for recycling.
     2. SJB Recycling is the UK’s largest independent green (garden) and food waste recycling company, handling hundreds of thousands of tonnes of material each year. This material, which is branded as Yorganics Composts, is processed to make compost which is sold to be used in the domestic and agricultural (farming) markets. The material is also used by large companies such as Anglia Water and Yorkshire Water, as part of a process which mixes green waste with sludge to produce a compost
     3. In relation to the Public Contract Regulations 2015 regulation 34 (Dynamic Purchasing System), the Company is inviting Suppliers to be included on a Dynamic Purchasing System (“DPS”) for third party bulk haulage.
     4. The scope of the DPS will be for the transfer of non-hazardous waste including but not limited to residual waste, sweepings and various recyclate. Please refer to the Specification for further information.
     5. The DPS will be split into 16 Lots based on the Company’s facilities in a number of locations / regions. The Lots are detailed in the table below:

|  |  |
| --- | --- |
| **Lot Number** | **Lot Description** |
| 1 | Richmond |
| 2 | Skipton |
| 3 | York |
| 4 | Ryedale |
| 5 | Scarborough |
| 6 | Whitby |
| 7 | Harrogate \*1 |
| 8 | Selby \*2 |
| 9 | Thirsk \*3 |
| 10 | Barnsley |
| 11 | Dewsbury |
| 12 | Bradford |
| 13 | Rotherham |
| 14 | Doncaster |
| 15 | Great Billing |
| 16 | Leeds |

\*1 This facility is currently only expected to be in use for a further two years

\*2 This facility is not yet in operation. We anticipate it will become operational in the next two years.

\*3 There is a possibility that this facility will not come online for the DPS.

* + 1. The term of the DPS will be for a period of 5 years from the Commencement Date of 1st January 2017.
    2. As part of its contract with North Yorkshire County Council, the Company shall be responsible for the bulk haul of residual black bag and bulky waste into Allerton Waste Recovery Park (“AWRP”). It is envisioned that deliveries will begin throughout July 2017 once AWRP commences its commissioning phase. There are restrictions placed upon what vehicles can tip waste at AWRP. This is further defined in the Specification. **By applying to be on this DPS, the Contractor acknowledges these restrictions and commits to being able to deliver the waste in the required vehicles.**
    3. Call Off Contracts will be awarded under the Dynamic Purchasing System by way of further competition or direct award using the procedure set out in Clause 6 of the Dynamic Purchasing System Agreement (Section 5).
    4. The Company gives no guarantee of any orders being placed through this DPS.
    5. As part of the process in applying to be appointed onto the DPS, the Suppliers will be asked to complete a price schedule to be used for any direct awards throughout the first year of the DPS (1st January 2017 to 31st December 2017. The price schedule will also be used as a ceiling price for any further competitions conducted within the year. Should the Company start using any new delivery points within any calendar month, the Company shall ask all Suppliers on the DPS to submit a ceiling price for the various combinations to the delivery point by the end of the calendar month. This will then be added to the price schedule.
    6. In November of each year, starting November 2017, the Company shall ask Suppliers to update the price schedule with their ceiling prices for the following year.
    7. It is anticipated the initial further competition will be conducted in early 2017. Further competitions will be run as and when the requirement arises, or on an annual basis at the sole discretion of the Company.
  1. **INDICATIVE PROCUREMENT TIMETABLE**
     1. The Company does not bind itself to accept any Request to Participate but every effort will be made to reach a decision on the establishment of the DPS. Suppliers should note that if the Company either decides not to accept any Request to Participate or to abandon the procurement process at any stage it will not be responsible for any costs which Suppliers may have incurred as a consequence of the Company’s decision.

1.2.2 The Company will accept requests to participate for the life of the DPS. The evaluation of submissions will be conducted within the timescales specified with the Public Contract Regulations 2015. Providing the Supplier meets the criteria, and the Company has decided to proceed with the DPS, the Suppliers will be appointed onto the DPS.

1.2.3 In regards to the first round of requests to participate to establish the DPS, the procurement document will be published on 14th November 2016. The deadline for submissions will be 14th December 2016 at 12 Noon.

* 1. **SUBMISSION OF REQUEST TO PARTICIPATE**

1.3.1 Requests to Participate for Round 1 of the DPS should be submitted via the ProContract procurement portal no later than 14th December 2016 at 12 Noon.

1.3.2 Any queries regarding this procurement should be submitted via the ProContract portal no later than 7th December 2016 at 12 Noon.

* 1. **EVALUATION**

1.4.1 Throughout the whole process, the Company reserves the right to seek clarifications from Suppliers, where this is considered necessary to achieve a complete understanding of the Requests to Participate received.

1.4.2 Suppliers will be asked a number of questions. The questions will be a mix of threshold questions, information only and scored questions. Please see the table below for further information.

|  |  |
| --- | --- |
| **Quality Questionnaire** | **Question Type** |
| 1. Supplier Information | Information only |
| 2. Grounds for mandatory exclusion | Threshold |
| 3. Grounds for discretionary exclusion | Threshold |
| 4. Economic and Financial Standing | Threshold |
| 5. Wider Group Information | Information only |
| 6. Technical and Professional Ability | Scored |
| 7. Modern Slavery | Threshold |
| 8.1. Project Specific | Threshold, Information only, Scored |
| 8.2. Insurance | Threshold |

1.4.3 The scored questions will be scored using the following scale of awarding marks between 0 and 10:

|  |  |
| --- | --- |
| **0** | **Completely unsatisfactory/unacceptable response**  No response to the question or serious deficiencies in meeting the required standards. |
| **1-2** | **Very poor response**  This response is barely compliant with a lot of shortfalls in meeting the required standards. |
| **3-4** | **Poor response**  The response is partially compliant with some shortfalls in meeting the required standards. |
| **5-6** | **Acceptable response**  The response is compliant and meets the basic contract standards. Any concerns are only of a minor nature. |
| **7-8** | **Good response**  The response is fully compliant and clearly indicates a full understanding of the contract. The required standards consistently deliver all the required contract standards. |
| **9-10** | **Excellent response**  The response is fully compliant and indicates the ability to exceed the required standards of the contract. |

1.4.4 Providing the Supplier has supplied all the information required they shall be scored on the relevant questions. To be deemed to have passed the scored questions, a score of 5 or above must be achieved. A score of 4 or below will result in a fail. If this happens, Suppliers will have the opportunity to improve their Request to Participate and submit it in the next round of the DPS. Please see Example 1 below for how the evaluation will work.

**Example 1**

**Supplier 1**

|  |  |  |
| --- | --- | --- |
| **Section/Question** | **Question Type** | **Result** |
| 1. Supplier Information | Information only | PASS |
| 2. Grounds for mandatory exclusion | Threshold | PASS |
| 3. Grounds for discretionary exclusion | Threshold | PASS |
| 4. Economic & financial standing | Threshold | PASS |
| 5. Wider group information | Information only | PASS |
| 6. Technical & professional ability | Scored – 25% | 8 – 20% |
| 7. Modern slavery | Threshold | PASS |
| 8.1a. Project specific | Information only | PASS |
| 8.1b. Project specific | Threshold | PASS |
| 8.1c. Project specific | Threshold | PASS |
| 8.1d. Project specific | Scored – 25% | 7 – 17.5% |
| 8.1e. Project specific | Scored – 25% | 9 – 22.5% |
| 8.1f. Project specific | Threshold | PASS |
| 8.1g. Project specific | Scored – 25% | 8 – 20% |
| 8.2. Insurance | Threshold | PASS |
| **Information Only** | | **PASS** |
| **Total Quality Score** | | **80%** |

**Supplier 2**

|  |  |  |
| --- | --- | --- |
| **Section/Question** | **Question Type** | **Result** |
| 1. Supplier Information | Information only | PASS |
| 2. Grounds for mandatory exclusion | Threshold | FAIL |
| 3. Grounds for discretionary exclusion | Threshold | PASS |
| 4. Economic & financial standing | Threshold | PASS |
| 5. Wider group information | Information only | PASS |
| 6. Technical & professional ability | Scored – 25% | NA |
| 7. Modern slavery | Threshold | PASS |
| 8.1a. Project specific | Information only | PASS |
| 8.1b. Project specific | Threshold | PASS |
| 8.1c. Project specific | Threshold | PASS |
| 8.1d. Project specific | Scored – 25% | NA |
| 8.1e. Project specific | Scored – 25% | NA |
| 8.1f. Project specific | Threshold | PASS |
| 8.1g. Project specific | Scored – 25% | NA |
| 8.2. Insurance | Threshold | PASS |
| **Information Only** | | **FAIL** |
| **Total Quality Score** | | **NA** |

**Supplier 3**

|  |  |  |
| --- | --- | --- |
| **Section/Question** | **Question Type** | **Result** |
| 1. Supplier Information | Information only | PASS |
| 2. Grounds for mandatory exclusion | Threshold | PASS |
| 3. Grounds for discretionary exclusion | Threshold | PASS |
| 4. Economic & financial standing | Threshold | PASS |
| 5. Wider group information | Information only | PASS |
| 6. Technical & professional ability | Scored – 25% | 6 – 15% |
| 7. Modern slavery | Threshold | PASS |
| 8.1a. Project specific | Information only | PASS |
| 8.1b. Project specific | Threshold | PASS |
| 8.1c. Project specific | Threshold | PASS |
| 8.1d. Project specific | Scored – 25% | 5 – 12.5% |
| 8.1e. Project specific | Scored – 25% | 7 – 17.5% |
| 8.1f. Project specific | Threshold | PASS |
| 8.1g. Project specific | Scored – 25% | 6 – 15% |
| 8.2. Insurance | Threshold | PASS |
| **Information Only** | | **PASS** |
| **Total Quality Score** | | **60%** |

**Supplier 4**

|  |  |  |
| --- | --- | --- |
| **Section/Question** | **Question Type** | **Result** |
| 1. Supplier Information | Information only | PASS |
| 2. Grounds for mandatory exclusion | Threshold | PASS |
| 3. Grounds for discretionary exclusion | Threshold | PASS |
| 4. Economic & financial standing | Threshold | PASS |
| 5. Wider group information | Information only | PASS |
| 6. Technical & professional ability | Scored – 25% | 8 – 20% |
| 7. Modern slavery | Threshold | PASS |
| 8.1a. Project specific | Information only | PASS |
| 8.1b. Project specific | Threshold | PASS |
| 8.1c. Project specific | Threshold | PASS |
| 8.1d. Project specific | Scored – 25% | 7 – 17.5% |
| 8.1e. Project specific | Scored – 25% | 6 – 15% |
| 8.1f. Project specific | Threshold | PASS |
| 8.1g. Project specific | Scored – 25% | 4 – 10% |
| 8.2. Insurance | Threshold | PASS |
| **Information Only** | | **FAIL** |
| **Total Quality Score** | | **NA – FAILED DUE TO SCORE OF 4** |

**Supplier 5**

|  |  |  |
| --- | --- | --- |
| **Section/Question** | **Question Type** | **Result** |
| 1. Supplier Information | Information only | PASS |
| 2. Grounds for mandatory exclusion | Threshold | PASS |
| 3. Grounds for discretionary exclusion | Threshold | PASS |
| 4. Economic & financial standing | Threshold | PASS |
| 5. Wider group information | Information only | PASS |
| 6. Technical & professional ability | Scored – 25% | 7 – 17.5% |
| 7. Modern slavery | Threshold | PASS |
| 8.1a. Project specific | Information only | PASS |
| 8.1b. Project specific | Threshold | PASS |
| 8.1c. Project specific | Threshold | PASS |
| 8.1d. Project specific | Scored – 25% | 8 – 20% |
| 8.1e. Project specific | Scored – 25% | 8 – 20% |
| 8.1f. Project specific | Threshold | PASS |
| 8.1g. Project specific | Scored – 25% | 7 – 17.5% |
| 8.2. Insurance | Threshold | PASS |
| **Information Only** | | **PASS** |
| **Total Quality Score** | | **75%** |

1.4.8 From the above example, Supplier’s 2 and 4 would not be appointed onto the DPS but would be allowed to improve their return and submit it in the following round.

**1.5 GENERAL INSTRUCTIONS**

1.5.1 Requests to Participate must be submitted in accordance with the following instructions and conditions. Any Suppliers that do not comply with these instructions or conditions may have their Request to Participate rejected.

1.5.2 The Company reserves the right to disqualify any submission which is incomplete.

1.5.3 Prospective Suppliers should be aware that canvassing (i.e. seeking the support of influential persons within the Company) will lead to disqualification.

1.5.4 The information that Suppliers give in response to the Request to Participate forms part of the legal representations of the Suppliers organisation during the procurement process. Any findings of misrepresentation may result in any subsequent contract being terminated.

1.5.5 The Supplier’s written response to any information required by the Company will be taken into account in the evaluation of completing the Request to Participate and if approved, will be binding but will not detract from the Specification or the Terms & Conditions.

1.5.6 Suppliers should note that wherever reference is made to any external assessment body or external accreditation standard, such reference shall be deemed to include reference to any equivalent body or standard established in other member states of the European Union.

1.5.7 Suppliers will be required to complete tables for each vehicle type. The Suppliers proposals may be supported by appropriate and adequately descriptive technical literature, drawings, plans or photographs of the vehicle. All written information provided will be checked with referees provided.

**1.6 INFORMATION, COSTS & EXPENSES**

1.6.1 The Supplier is responsible for obtaining all information necessary for the preparation of its submission and all costs expenses and liabilities incurred by the Supplier in connection with the preparation and submission of the Request to Participate will be borne by the Supplier.

1.6.2 Suppliers should satisfy themselves of the accuracy of all fees, rates and prices quoted, since Suppliers will be required to hold these or withdraw their Request to Participate in the event of errors being identified after the submission of Request to Participate.

1.6.3 If a Supplier fails to provide fully for the requirements of the Specification in the Request to Participate when the Company direct awards a Call Off Contract, it must either:

(a) absorb the costs of meeting the full requirements of the Specification within its Request to Participate price; or

(b) withdraw its Request to Participate.

**1.7 RESEARCH AND INVESTIGATION**

1.7.1 The Supplier will be deemed for all purposes connected with the Request to Participate and the Contract to have carried out all researches, investigations and enquiries which can reasonably be carried out and to have satisfied itself as to the nature, extent, and character of the requirements of the Contract (in the context of and as it is described in the Specification), the extent of the materials and equipment which may be required and any other matter which may affect its Request to Participate.

1.7.2 The Supplier shall have no claim whatsoever against the Company in respect of such matters and in particular (but without limitation) neither the Company shall make any payments to the Supplier save as expressly provided for in the Contract and (save to the extent set out in the Contract) no compensation or remuneration shall otherwise be payable by any Company to the Supplier in respect of the scope of the Contract being different from that envisaged by the Supplier or otherwise. Information given in respect of current orders is given as a guide and the Company makes no warranty and accepts no liability as to the actual value or volume of orders to be placed with the Supplier.

**1.8 ACCEPTANCE OF REQUEST TO PARTICIPATE**

1.8.1 Any acceptance of a Request to Participate by the Company will be in writing and communicated to the Supplier.

1.8.2 The Company will inform the Supplier of the acceptance of the offer by means of a formal letter accompanied by two copies of the contract document. The Supplier will be expected to sign and return the contract document to the Company who will duly sign and complete the contract and return one copy to the Supplier.

**2. SPECIFICATION**

1. **Description of the Service** 
   1. The Contractor shall provide bulk haulage transport, collecting a variety of waste types from multiple collection points of both our internal and external clients and delivering them to a network of Delivery Points (“the Services”). For a list of the current collection and delivery points, please see Appendix One. The waste types include but are not limited to mixed municipal waste, bulky waste, sweepings, DMR (Dry Mixed Recyclate), green waste and compost.
   2. The Contractor shall provide all resources and support services necessary in relation to the Services in accordance with the terms and conditions of the Dynamic Purchasing System Agreement.
   3. The Contractor must ensure that all drivers have received site inductions on the sites where the Services are taking place (both collection and delivery point) and comply with all statutory health & safety and environmental compliance site rules.
   4. In November of each year, starting November 2017, the Company shall ask all Contractors on the DPS to update the price schedule with their ceiling prices for the following year.
   5. The Company gives no guarantee of the amount of work, if any, given through this Dynamic Purchasing System Agreement.
2. **Waste Quantities and Transport Requirements**
   1. Please see Appendix Two.
3. **Waste Transportation**
   1. The Contractor must hold as a minimum, UK Standard Goods Vehicle Operators Licence.
   2. The Contractor must have a valid Waste Carriers Licence.
   3. The Contractor shall use a range of vehicles including, but not limited to, articulated walking floor trailers, articulated ejector trailers and articulated tipper bodied trailers to maximise material weights. All vehicles shall have on board weighing systems.
   4. For deliveries of waste into Allerton Waste Recovery Park (“AWRP”), the Contractor shall ensure they use either articulated walking floor trailers or articulated ejector trailers. In addition, the Contractor shall ensure that the driver has the ability to open and close the back door of the trailers from inside the cab. This is due to restrictions in place at AWRP.
   5. Where the Contractor arrives at AWRP in a vehicle that is not permitted as per paragraph 3.4, the Contractor shall by liable for all consequential costs of being turned away from AWRP and the remedial action that will need to be taken.
   6. The remedial action to be taken as per 3.5 shall be agreed by the Contractor and the Company at the time of the incident.
   7. When collecting the Waste, the Contractor shall ensure that it arrives on site by 2:30pm to allow plenty of time for the vehicle to be loaded within the sites operating hours.
   8. The Contractor shall never plan to go over the gross vehicle weight and shall ensure it remains compliant with all parts of its O licence at all times.
   9. Waste can only be disposed of as per the normal opening hours for the delivery points. Please see Appendix One for the normal opening hours for all the facilities. The Contractor should note that Appendix One will be continuously updated throughout the Contract Period to reflect changes in collection and delivery points.
   10. The Contractor shall ensure that all vehicles transporting waste are weighed in and out of the delivery point. Stored tare weights shall only be used in emergencies and when prior notification has been sent to Yorwaste.
   11. The Contractor shall ensure its drivers obey the instructions given by the Company’s staff whilst on site and co-operate fully with all requests in relation to the delivery of the Service.
4. **Contingency Plan**
   1. The Contractor shall ensure that it submits a contingency plan for approval to the Company no later than four weeks after the Commencement Date of the Call Off Contract.
   2. It is the Contractor’s responsibility to provide the Services as required under the Call Off Contract. Where the Contractor is unable to provide the Services and the Company has to make alternative arrangements, the Contractor shall meet all the Company’s costs in doing so.
5. **Health & Safety**
   1. The Contractor shall take all measures as are necessary to ensure safety, health and welfare of all persons at work.
   2. The Contractor shall notify Yorwaste of any changes of contact details for the nominated people within their organisation responsible for Health & Safety matters.
   3. The Contractor shall at all times ensure that its own health and safety policy and procedures are adhered to and take into account any existing and future guidance from the Health & Safety Executive (HSE) (or other similar body) relating to the safe transport of waste.
   4. The Contractor shall review its health and safety policy, safety procedures and risk assessments as requested by Yorwaste and on a periodic basis no greater than every twelve months. Yorwaste reserves the right to comment upon such health and safety policy, safety procedures and risk assessments as it feels appropriate and request a review at any stage.
   5. The Contractor shall ensure risk assessments and controls are applied to any present or future activities relating to the Service. The Contractor shall confirm when its risk assessments have been reviewed and shall supply Yorwaste with copies of any new or modified risk assessments and safety procedures which relate to the Services.
   6. The Contractor shall ensure that all trailers are fitted with auto / ground level sheeting systems.
   7. The Contractor shall not be permitted to access their loads. The Contractor shall ensure that its staff adhere to the procedures in place for dressing loads, dealing with snagged or damaged sheets, dealing with jammed loads etc. and any other instance whereby a driver may want to access their load.
   8. The Contractor shall at all times ensure provision of safety information, instruction, training and supervision. The Contractor shall ensure that all members of staff have the appropriate level of health and safety training to enable them to safely provide the Services.
   9. The Contractor shall maintain a first aid box equipped with appropriate first aid equipment that shall be kept in the vehicles at all times.
   10. The Contractor shall demonstrate an active monitoring of safety in the provision of the Service; this shall include the completion of daily check lists of the vehicles.
   11. The Contractor shall investigate and rectify all health and safety issues identified by the Company. The Contractor shall agree with the Company and action plan to address these including a timescale.
6. **Provision of Information**
   1. The Contractor shall record details of any incidents and report immediately to the Company Representative and anyone they may nominate including:
      1. Health & Safety incidents/near miss
      2. Vehicle accidents
      3. Vehicle breakdowns
      4. Missed/delayed collections
   2. The Contractor shall record weighbridge ticket numbers and weights at each delivery point for the purpose of establishing actual net weights of waste delivered to the delivery point. This information must be supplied via email to the Company Representative and/or anyone they may nominate within 48 hours of the delivery taking place.
   3. The Contractor shall submit a weekly invoice to the Company.
   4. The Contractor shall submit detailed OCRS reports to the Company every six months. The reports shall include the positive events over the past three years.
7. **Performance & Monitoring**
   1. The Contractor is required to undertake the following performance monitoring regime:
      1. To take note of the prioritisation of reported service performance failures.
      2. To operate procedures and systems to record information in support of performance monitoring and to enable regular and robust performance reporting.
      3. To monitor the performance of the Services and produce quarterly performance reports for the Company.
   2. The Contractor shall self-monitor their performance in line with the Key Performance Indicators set out in Table 1 below:

|  |  |  |
| --- | --- | --- |
| **No.** | **Key Performance Indicator** | **Unit of Measure** |
| 1. | OCRS Score compliance | 100% compliance |
| 2. | Waste transported is reported within 48 hours | 98% compliance |
| 3. | On time collections | 95% compliance |
| 4. | Invoices to have an agreed purchase order number on them | 100% compliance |

* 1. The Contractor and the Company shall ensure both parties fully comply with all obligations detailed in Clause 27 of the Call Off Conditions.
  2. The Contract Manager and Company Representative shall meet on a quarterly basis to discuss the performance of the Contractor.

**3. Standard Selection Questionnaire**

**Potential Supplier Information and Exclusion Grounds: Part 1 and Part 2.**

The standard Selection Questionnaire is a self-declaration, made by you (the potential supplier), that you do not meet any of the grounds for exclusion[[1]](#footnote-1). If there are grounds for exclusion, there is an opportunity to explain the background and any measures you have taken to rectify the situation (we call this self-cleaning).

A completed declaration of Part 1 and Part 2 provides a formal statement that the organisation making the declaration has not breached any of the exclusions grounds. Consequently we require all the organisations that you will rely on to meet the selection criteria to provide a completed Part 1 and Part 2. For example these could be parent companies, affiliates, associates, or essential sub-contractors, if they are relied upon to meet the selection criteria. This means that where you are joining in a group of organisations, including joint ventures and partnerships, each organisation in that group must complete one of these self-declarations. Sub-contractors that you rely on to meet the selection criteria must also complete a self-declaration (although sub-contractors that are not relied upon do not need to complete the self-declaration).

When completed, this form is to be sent back to the contact point given in the procurement documents along with the selection information requested in the procurement documentation.

**Note for Contracting Authorities: The following paragraph is optional for inclusion, authorities can delete it** if **they prefer to receive** only **Word/ PDF versions of the standard Selection Questionnaire**. [*Alternatively you can submit the completed Exclusion Grounds of the* [*EU ESPD*](https://ec.europa.eu/tools/espd) *(Part III) as a downloaded XML file to the buyer contact point along with the selection information requested in the procurement documentation*.]

**Supplier Selection Questions: Part 3**

The procurement document will provide instructions on the selection questions you need to respond to and how to submit those responses. If you are bidding on behalf of a group (consortium) or you intend to use sub-contractors, you should complete all of the selection questions on behalf of the consortium and/or any sub-contractors.

If the relevant documentary evidence referred to in the Selection Questionnaire is not provided upon request and without delay we reserve the right to amend the contract award decision and award to the next compliant bidder.

**Consequences of misrepresentation**

If you seriously misrepresent any factual information in filling in the Selection Questionnaire, and so induce an authority to enter into a contract, there may be significant consequences. You may be excluded from the procurement procedure, and from bidding for other contracts for three years. If a contract has been entered into you may be sued for damages and the contract may be rescinded. If fraud, or fraudulent intent, can be proved, you or your responsible officers may be prosecuted and convicted of the offence of fraud by false representation, and you must be excluded from further procurements for five years.

**THIRD PARTY BULK HAULAGE DYNAMIC PURCHASING SYSTEM**

**YOR/TFR/003**

**RESTRICTED PROCEDURE**

**Notes for completion**

1. The “authority” means the contracting authority, or anyone acting on behalf of the contracting authority, that is seeking to invite suitable candidates to participate in this procurement process.
2. “You” / “Your” refers to the potential supplier completing this standard Selection Questionnaire i.e. the legal entity responsible for the information provided. The term “potential supplier” is intended to cover any economic operator as defined by the Public Contracts Regulations 2015 (referred to as the “regulations”) and could be a registered company; the lead contact for a group of economic operators; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity.
3. Please ensure that all questions are completed in full, and in the format requested. If the question does not apply to you, please state ‘N/A’. Should you need to provide additional information in response to the questions, please submit a clearly identified annex.
4. The authority recognises that arrangements set out in section 1.2 of the standard Selection Questionnaire, in relation to a group of economic operators (for example, a consortium) and/or use of sub-contractors, may be subject to change and will, therefore, not be finalised until a later date. The lead contact should notify the authority immediately of any change in the proposed arrangements and ensure a completed Part 1 and Part 2 is submitted for any new organisation relied on to meet the selection criteria. The authority will make a revised assessment of the submission based on the updated information.
5. For Part 1 and Part 2 every organisation that is being relied on to meet the selection must complete and submit the self-declaration.
6. **Note for Contracting Authorities: The following paragraph is optional for inclusion if a decision has been made to request a self-declaration of the exclusion grounds from sub-contractors.** *All sub-contractors are required to complete Part 1 and Part 2[[2]](#footnote-2).*
7. For answers to Part 3 -If you are bidding on behalf of a group, for example, a consortium, or you intend to use sub-contractors, you should complete all of the questions on behalf of the consortium and/ or any sub-contractors, providing one composite response and declaration.

The authority confirms that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the regulations, or pursuant to an order of the court or demand made by any competent authority or body where the authority is under a legal or regulatory obligation to make such a disclosure.

**Part 1: Potential supplier Information**

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

|  |  |  |
| --- | --- | --- |
| Section 1 | Potential supplier information | |
| Question number | Question | Response |
| 1.1(a) | Full name of the potential supplier submitting the information |  |
| 1.1(b) – (i) | Registered office address (if applicable) |  |
| 1.1(b) – (ii) | Registered website address (if applicable) |  |
| 1.1(c) | Trading status   1. public limited company 2. limited company 3. limited liability partnership 4. other partnership 5. sole trader 6. third sector 7. other (please specify your trading status) |  |
| 1.1(d) | Date of registration in country of origin |  |
| 1.1(e) | Company registration number (if applicable) |  |
| 1.1(f) | Charity registration number (if applicable) |  |
| 1.1(g) | Head office DUNS number (if applicable) |  |
| 1.1(h) | Registered VAT number |  |
| 1.1(i) - (i) | If applicable, is your organisation registered with the appropriate professional or trade register(s) in the member state where it is established? | Yes ☐  No ☐  N/A ☐ |
| 1.1(i) - (ii) | If you responded yes to 1.1(i) - (i), please provide the relevant details, including the registration number(s). |  |
| 1.1(j) - (i) | Is it a legal requirement in the state where you are established for you to possess a particular authorisation, or be a member of a particular organisation in order to provide the services specified in this procurement? | Yes ☐  No ☐ |
| 1.1(j) - (ii) | If you responded yes to 1.1(j) - (i), please provide additional details of what is required and confirmation that you have complied with this. |  |
| 1.1(k) | Trading name(s) that will be used if successful in this procurement |  |
| 1.1(l) | Relevant classifications (state whether you fall within one of these, and if so which one)   1. Voluntary Community Social Enterprise (VCSE) 2. Sheltered Workshop 3. Public service mutual |  |
| 1.1(m) | Are you a Small, Medium or Micro Enterprise (SME)[[3]](#footnote-3)? | Yes ☐  No ☐ |
| 1.1(n) | Details of Persons of Significant Control (PSC), where appropriate: [[4]](#footnote-4)  - Name;  - Date of birth;  - Nationality;  - Country, state or part of the UK where the PSC usually lives;  - Service address;  - The date he or she became a PSC in relation to the company (for existing companies the 6 April 2016 should be used);  - Which conditions for being a PSC are met;  - Over 25% up to (and including) 50%,  - More than 50% and less than 75%,  - 75% or more. [[5]](#footnote-5)  (Please enter N/A if not applicable) |  |
| 1.1(o) | Details of immediate parent company:    - Full name of the immediate parent company  - Registered office address (if applicable)  - Registration number (if applicable)  - Head office DUNS number (if applicable)  - Head office VAT number (if applicable)  (Please enter N/A if not applicable) |  |
| 1.1(p) | Details of ultimate parent company:  - Full name of the ultimate parent company  - Registered office address (if applicable)  - Registration number (if applicable)  - Head office DUNS number (if applicable)  - Head office VAT number (if applicable)  (Please enter N/A if not applicable) |  |

Please note: A criminal record check for relevant convictions may be undertaken for the preferred suppliers and the persons of significant in control of them.

Please provide the following information about your approach to this procurement:

|  |  |  |
| --- | --- | --- |
| Section 1 | Bidding model | |
| Question number | Question | Response |
| 1.2(a) - (i) | Are you bidding as the lead contact for a group of economic operators? | Yes ☐  No ☐  If yes, please provide details listed in questions 1.2(a) (ii), (a) (iii) and to 1.2(b) (i), (b) (ii), 1.3, Section 2 and 3.  If no, and you are a supporting bidder please provide the name of your group at 1.2(a) (ii) for reference purposes, and complete 1.3, Section 2 and 3. |
| 1.2(a) - (ii) | Name of group of economic operators (if applicable) |  |
| 1.2(a) - (iii) | Proposed legal structure if the group of economic operators intends to form a named single legal entity prior to signing a contract, if awarded. If you do not propose to form a single legal entity, please explain the legal structure. |  |
| 1.2(b) - (i) | Are you or, if applicable, the group of economic operators proposing to use sub-contractors? | Yes ☐  No ☐ |
| 1.2(b) - (ii) | If you responded yes to 1.2(b)-(i) please provide additional details for each sub-contractor in the following table: we may ask them to complete this form as well.   |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | Name |  |  |  |  |  | | Registered address |  |  |  |  |  | | Trading status |  |  |  |  |  | | Company registration number |  |  |  |  |  | | Head Office DUNS number (if applicable) |  |  |  |  |  | | Registered VAT number |  |  |  |  |  | | Type of organisation |  |  |  |  |  | | SME (Yes/No) |  |  |  |  |  | | The role each sub-contractor will take in providing the works and /or supplies e.g. key deliverables |  |  |  |  |  | | The approximate % of contractual obligations assigned to each sub-contractor |  |  |  |  |  | | |

**Contact details and declaration**

I declare that to the best of my knowledge the answers submitted and information contained in this document are correct and accurate.

I declare that, upon request and without delay I will provide the certificates or documentary evidence referred to in this document.

I understand that the information will be used in the selection process to assess my organisation’s suitability to be invited to participate further in this procurement.

I understand that the authority may reject this submission in its entirety if there is a failure to answer all the relevant questions fully, or if false/misleading information or content is provided in any section.

I am aware of the consequences of serious misrepresentation.

|  |  |  |
| --- | --- | --- |
| Section 1 | Contact details and declaration | |
| Question number | Question | Response |
| 1.3(a) | Contact name |  |
| 1.3(b) | Name of organisation |  |
| 1.3(c) | Role in organisation |  |
| 1.3(d) | Phone number |  |
| 1.3(e) | E-mail address |  |
| 1.3(f) | Postal address |  |
| 1.3(g) | Signature (electronic is acceptable) |  |
| 1.3(h) | Date |  |

**Part 2: Exclusion Grounds**

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

|  |  |  |
| --- | --- | --- |
| Section 2 | Grounds for mandatory exclusion | |
| Question number | Question | Response |
| 2.1(a) | **Regulations 57(1) and (2)**  The detailed grounds for mandatory exclusion of an organisation are set out on this [webpage](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf), which should be referred to before completing these questions.  Please indicate if, within the past five years you, your organisation or any other person who has powers of representation, decision or control in the organisation been convicted anywhere in the world of any of the offences within the summary below and listed on the [webpage](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf). | |
|  | Participation in a criminal organisation. | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
|  | Corruption. | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
|  | Fraud. | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
|  | Terrorist offences or offences linked to terrorist activities | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
|  | Money laundering or terrorist financing | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
|  | Child labour and other forms of trafficking in human beings | Yes ☐  No ☐  If Yes please provide details at 2.1(b) |
| 2.1(b) | If you have answered yes to question 2.1(a), please provide further details.  Date of conviction, specify which of the grounds listed the conviction was for, and the reasons for conviction,  Identity of who has been convicted  If the relevant documentation is available electronically please provide the web address, issuing authority, precise reference of the documents. |  |
| 2.2 | If you have answered Yes to any of the points above have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion ? (Self Cleaning) | Yes ☐  No ☐ |
| 2.3(a) | **Regulation 57(3)**  Has it been established, for your organisation by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions? | Yes ☐  No ☐ |
| 2.3(b) | If you have answered yes to question 2.3(a), please provide further details. Please also confirm you have paid, or have entered into a binding arrangement with a view to paying, the outstanding sum including where applicable any accrued interest and/or fines. |  |

Please Note: The authority reserves the right to use its discretion to exclude a potential supplier where it can demonstrate by any appropriate means that the potential supplier is in breach of its obligations relating to the non-payment of taxes or social security contributions.

|  |  |  |
| --- | --- | --- |
| Section 3 | Grounds for discretionary exclusion | |
|  | Question | Response |
| 3.1 | **Regulation 57 (8)**  The detailed grounds for discretionary exclusion of an organisation are set out on this [webpage](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf), which should be referred to before completing these questions.  Please indicate if, within the past three years, anywhere in the world any of the following situations have applied to you, your organisation or any other person who has powers of representation, decision or control in the organisation. | |
| 3.1(a) | Breach of environmental obligations? | Yes ☐  No ☐  If yes please provide details at 3.2 |
| 3.1 (b) | Breach of social obligations? | Yes ☐  No ☐  If yes please provide details at 3.2 |
| 3.1 (c) | Breach of labour law obligations? | Yes ☐  No ☐  If yes please provide details at 3.2 |
| 3.1(d) | Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation’s assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State? | Yes ☐  No ☐  If yes please provide details at 3.2 |
| 3.1(e) | Guilty of grave professional misconduct? | Yes ☐  No ☐  If yes please provide details at 3.2 |
| 3.1(f) | Entered into agreements with other economic operators aimed at distorting competition? | Yes ☐  No ☐  If yes please provide details at 3.2 |
| 3.1(g) | Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure? | Yes ☐  No ☐  If yes please provide details at 3.2 |
| 3.1(h) | Been involved in the preparation of the procurement procedure? | Yes ☐  No ☐  If yes please provide details at 3.2 |
| 3.1(i) | Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions? | Yes ☐  No ☐  If yes please provide details at 3.2 |
| 3.1(j)  3.1(j) - (i)  3.1(j) - (ii)  3.1(j) –(iii)  3.1(j)-(iv) | Please answer the following statements  The organisation is guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria.  The organisation has withheld such information.  The organisation is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015.  The organisation has influenced the decision-making process of the contracting authority to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or to negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award. | Yes ☐  No ☐  If Yes please provide details at 3.2  Yes ☐  No ☐  If Yes please provide details at 3.2  Yes ☐  No ☐  If Yes please provide details at 3.2  Yes ☐  No ☐  If Yes please provide details at 3.2 |

|  |  |  |
| --- | --- | --- |
| 3.2 | If you have answered Yes to any of the above, explain what measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning) |  |

**Part 3: Selection Questions**[[6]](#footnote-6)

|  |  |  |  |
| --- | --- | --- | --- |
| **Section 4** | **Economic and Financial Standing** | | |
|  | Question | Response | |
| **4.1** | Are you able to provide a copy of your audited accounts for the last two years, if requested?  If no, can you provide **one** of the following: answer with Y/N in the relevant box. | | Yes ☐  No ☐ |
| (a) A statement of the turnover, Profit and Loss Account/Income Statement, Balance Sheet/Statement of Financial Position and Statement of Cash Flow for the most recent year of trading for this organisation. | | Yes ☐  No ☐ |
| (b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position. | | Yes ☐  No ☐ |
|  | (c) Alternative means of demonstrating financial status if any of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status). | | Yes ☐  No ☐ |
| **4.2** | Where we have specified a minimum level of economic and financial standing and/ or a minimum financial threshold within the evaluation criteria for this procurement, please self-certify by answering ‘Yes’ or ‘No’ that you meet the requirements set out. | | Yes ☐  No ☐ |

|  |  |  |
| --- | --- | --- |
| **Section 5** | **If you have indicated in the Selection Questionnaire question 1.2 that you are part of a wider group, please provide further details below:** | |
| **Name of organisation** | |  |
| **Relationship to the Supplier completing these questions** | |  |

|  |  |  |
| --- | --- | --- |
| **5.1** | Are you able to provide parent company accounts if requested to at a later stage? | Yes ☐  No ☐ |
| **5.2** | If yes, would the parent company be willing to provide a guarantee if necessary? | Yes ☐  No ☐ |
| **5.3** | If no, would you be able to obtain a guarantee elsewhere (e.g. from a bank)? | Yes ☐  No ☐ |

|  |  |
| --- | --- |
| **Section 6** | **Technical and Professional Ability** |
| **6.1** | **Relevant experience and contract examples**  Please provide details of up to three contracts, in any combination from either the public or private sector; voluntary, charity or social enterprise (VCSE) that are relevant to our requirement. VCSEs may include samples of grant-funded work. Contracts for supplies or services should have been performed during the past three years. Works contracts may be from the past five years.  The named contact provided should be able to provide written evidence to confirm the accuracy of the information provided below.  Consortia bids should provide relevant examples of where the consortium has delivered similar requirements. If this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle is to be created for this contract) then three separate examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle (three examples are not required from each member).  Where the Supplier is a Special Purpose Vehicle, or a managing agent not intending to be the main provider of the supplies or services, the information requested should be provided in respect of the main intended provider(s) or sub-contractor(s) who will deliver the contract.  If you cannot provide examples see question 6.3  *Scored – 25%* |

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Contract 1** | **Contract 2** | **Contract 3** |
| **Name of customer organisation** |  |  |  |
| **Point of contact in the organisation** |  |  |  |
| **Position in the organisation** |  |  |  |
| **E-mail address** |  |  |  |
| **Description of contract** |  |  |  |
| **Contract Start date** |  |  |  |
| **Contract completion date** |  |  |  |
| **Estimated contract value** |  |  |  |

|  |  |
| --- | --- |
| **6.2** | Where you intend to sub-contract a proportion of the contract, please demonstrate how you have previously maintained healthy supply chains with your sub-contractor(s)  Evidence should include, but is not limited to, details of your supply chain management tracking systems to ensure performance of the contract and including prompt payment or membership of the UK Prompt Payment Code (or equivalent schemes in other countries) |
|  |  |

|  |  |
| --- | --- |
| **6.3** | If you cannot provide at least one example for questions 6.1, in no more than 500 words please provide an explanation for this e.g. your organisation is a new start-up or you have provided services in the past but not under a contract. |
|  |  |

|  |  |  |
| --- | --- | --- |
| **Section 7** | **Modern Slavery Act 2015:** **Requirements under Modern Slavery Act 2015** | |
| **7.1** | Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")? | Yes ☐  N/A ☐ |
| **7.2** | If you have answered yes to question 7.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015? | Yes ☐  Please provide the relevant url …  No ☐  Please provide an explanation |

**8. Additional Questions**

Suppliers who self-certify that they meet the requirements to these additional questions will be required to provide evidence of this if they are successful at contract award stage.

|  |  |
| --- | --- |
| **Section 8** | **Additional Questions** |
| **8.1** | **Project Specific** |
| a. | Please state the lot numbers you would like to participate in.  *Information only* |
| b. | Please provide your most recent OCRS report included the detail regarding positive events over the past three years.  *Threshold – Supplier must have a minimum score of green for the roadworthiness and amber for the traffic.* |
| c. | Please provide a copy of your O Licence.  *Threshold – Supplier must have and submit a copy of the operating licence to the Company to pass this threshold.* |
| d. | Please explain the training regime you have in place to ensure your staff a fully competent at all times. Please include reference to driver CPC certification and other measure of professional competence.  *Scored – 25%* |
| e. | Please give detail on the vehicle maintenance regime that is operated at your organisation.  *Scored – 25%* |
| f. | Please provide a copy of your waste carriers licence.  *Threshold – this threshold is only passed once the Company has seen a valid waste carriers licence for the organisation.* |
| g. | Please provide example risk assessments and method statements for the collection of waste material from a waste transfer station.  *Scored – 25%* |
| h. | Please detail what vehicles you would intend to use if awarded a call-off contract from this DPS. Please include detail on the trailers including size etc.  *Information only* |
| **8.2** | **Insurance** |
| a. | Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:  Y/N  Employer’s (Compulsory) Liability Insurance = £10,000,000  Public Liability Insurance = £10,000,000  \*It is a legal requirement that all companies hold Employer’s (Compulsory) Liability Insurance of £5 million as a minimum. Please note this requirement is not applicable to Sole Traders. |

**4. PRICING SCHEDULE**

1. The prices submitted must be exclusive of VAT.
2. Please note these prices are not scored, however, they will form the ceiling prices for the life of the DPS. Upon submitting a further competition bid, Suppliers will be disqualified if they submit a price that is greater than ceiling price submitted for that year.
3. Please complete the document entitled Price Schedule.

# CONTRACT ACCEPTANCE

Contract for Third Party Haulage Services

To Yorwaste Limited

I/we the undersigned DO HEREBY UNDERTAKE to provide the Goods and or Services upon and subject to the terms and conditions set out, Specification, and the pricing and rates contained in the pricing schedule and other documents as are contained or incorporated herein.

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

*Duly authorised agent of the Supplier*

(Electronic/typed signatures are acceptable)

Position held ...............................................................

Name and Address ...............................................................

of Supplier

...............................................................

...............................................................

...............................................................

Dated ..............................................................

It must be clearly shown whether the Supplier is a Limited Company, Corporation, Partnership, or Single Individual, trading in his own or another name, and also if the person signing is not the actual Supplier, the capacity in which he signs or is employed.

*Note – Electronic signatures or typed names are acceptable. In the event that your organisation is successful you will be required to resign this form with an original signature*

**DYNAMIC PURCHASING SYSTEM AGREEMENT CONDITIONS**

**CONTENTS**

1. Definitions and Interpretations
2. Term of Framework Agreement
3. Scope of Agreement
4. Contractors Appointment
5. Non-Exclusivity
6. Award Procedures
7. Form of Order
8. Accepting and Declining Orders
9. Call-Off Conditions Performance
10. Transfer and Sub-Contracting
11. Variations to the Framework Agreement
12. Contractor’s Obligations
13. Contractor’s Staff
14. Health and Safety, Data Protection and other Statutory Requirements
15. Agency
16. Warranties and Liability
17. Indemnity and Insurance
18. Payment
19. VAT
20. Legal Proceedings and Disclosure of Relevant Information
21. Dispute Resolution
22. Termination
23. Notices
24. Waiver
25. Complaints Procedure
26. Satisfaction Surveys
27. Sustainability
28. Best Value, Price Reduction and Technological Improvements
29. Entire Agreement

SCHEDULE 1 – SPECIFICATION

SCHEDULE 2 – CALL-OFF AWARD CRITERIA

SCHEDULE 3 – ORDER FORM

SCHEDULE 4 – CALL-OFF CONDITIONS AND SPECIAL CONDITIONS

SCHEDULE 5 – THE TENDER

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. |
|  |  |
| ***Commencement Date*** | 1st January 2017 |
| ***Company*** | Yorwaste Limited & SJB Recycling |
| ***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 reasonable satisfaction |
|  |  |
| ***Dynamic Purchasing System Agreement*** | this agreement and all Appendices to this agreement including the Specification and the Call-Off Conditions |
| ***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 7 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 |
| ***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 |
| ***Tender*** | the Contractor's Tender for the provision of the Services |
| ***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 this 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 this 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 additional costs incurred may be deducted from the Contract Charges or shall be recoverable as a debt. The Contractor shall not paid for what it did not provide.

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 Four.

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 Three

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.

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. **GUARANTEES, 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.

16.2 The Contractor hereby guarantees the Goods required to conform to the Specification for the period from the date of delivery to the date 36 months thereafter against faulty materials or workmanship. If the Company within such guarantee period or within 25 working days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Company may have) promptly remedy such defects (whether by repair or replacement as the Company shall elect) free of charge.

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 must have professional indemnity insurance in an amount for each and every claim, act or occurrence or series of claims, acts or occurrences which is sufficient to cover its liabilities under this Contract.
   5. 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 – 4 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.
   8. Where the Company is late in paying invoices for monies owed to the Contractor, where the Company has still not paid 14 days after receiving a written notice identifying the missing payment, the Contractor shall have the right to suspend the Service until the invoices are paid.
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 additional 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.
   2. The Contractor shall have the same rights as the Company under clause 22.1(a) to (g).
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 29.
   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 30 (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 32 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.

1. **Quality (Minimum 10%, maximum 30%)**

The Company may ask Contractors to provide their most recent OCRS score, up to date training records for members of staff who would be working on our contract, how they would propose the bulk haulage to be coordinated based on the Lots they are bidding for and their current maintenance records for the vehicles that would be used on our Service.

1. **Evaluation of price (Minimum 70%, maximum 90%)**

The Company will ask for a load rate for a number of combinations using the collection and delivery points stated in Appendix One. If any new delivery points have come online since the original issue of Appendix One, an amended version will be circulated as part of the further competition.

* 1. The Company will then select from across the range of tenders submitted a combination of ability to deliver the Service giving best value to the Company at all times.

**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)

[18. 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)

[19. 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)

[20. 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)

[21. 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)

[22. 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)

[23. 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)

[24. 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)

[25. 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)

[26. 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)

[27. 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)

28. Monitoring of Call Off Contract Performance

Annex 1 – Special Conditions

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

**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.

**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 reasonable 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;

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

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

Invitation to Tender and the Tender.

**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 Company’s request to participate for the Services including all the attached Schedules

**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 Annex 1

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

**Tender** the Contractor's tender for the Service

* 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 additional costs incurred may be deducted from the Contract Charges or shall be recoverable as a debt. The Contractor shall not be paid for the Service it did not provide.
   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 and cease all works until the site manager has signed off the hazard.
       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. The Contractor and the Company shall ensure the following rules are adhered to at all times:
          1. The Contractor shall submit a copy of their health and safety policy to the Company upon request.
          2. The Contractor shall ensure it’s staff are familiar with the Company’s health & safety policy. Please see Appendix Four.
          3. The Company shall ensure its site managers carry out inductions with the Contractor’s staff prior to work starting at any site.
          4. Where practicable, the Contractor’s employees are made identifiable by the Contractors name or company logo affixed to their safety helmet or overalls.
          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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* + - 1. The Contractor shall ensure its staff sign in upon arrival on site and subsequently sign out when leaving.
      2. The Contractor shall ensure it’s staff comply with the Company’s “Yorsafety Basic Standards”. Please see Appendix Three.
      3. The Contractor shall ensure its staff have the following personal protective equipment (“PPE”) for when working on the Company’s sites:
         1. Safety helmets to BS EN 397, neither damaged nor time expired
         2. Full body high visibility clothing to BS EN 471 Class 2
         3. Eye protection to BS EN 166
         4. Ear protection – plugs to BS EN 352-2
         5. Hand protection – to BS EN 388, 407, 420 or 511 as appropriate.
      4. The only exceptions to these PPE requirements are:
         1. Personnel inside offices, weighbridge cabins or welfare accommodation
         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.
         3. Personnel walking directly to or from the car park to the office, reception or welfare block.
         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.
         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.
      5. The Contractor shall ensure instructions or commands depicted on safety signs are complied with at all times.
      6. The Contractor shall ensure that staff only carry out tasks for which they are competent and authorised.
      7. The Contractor shall ensure that staff only operate and use plant and equipment for which they are trained and authorised.
    1. 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:
       1. Maintenance or removal of in-situ asbestos
       2. Confined space entry including entry into any enclosed spaces such as tanks, sumps, wells (including baler entry)
       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
       4. Work at height, including roof work
       5. Work on electrical systems
       6. Construction and demolition
       7. Crane operations
       8. Excavation
       9. Any work on the landfill gas system
    2. Other occasion may arise where a Permit to Work is considered necessary, due to the high risk nature of the project.
    3. 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.
    4. 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).
    5. 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.
    6. All fires, no matter how small must be reported to the site manager and Company Representative.
    7. 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.
    8. Employees of the Contractor are not permitted to use any equipment or machinery belonging to the Company.
    9. Equipment that is the property of another contractor shall not be used unless the specific permission of the owner has been obtained.
    10. All portable electrical equipment / power tools used on site must be 110v and be covered by a valid PAT safety test.
    11. Guards or fencing shall not be moved from machines or equipment without exception.
    12. 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.
    13. Reverse parking shall be operated wherever practicable.
    14. The Contractor shall ensure that only competent, licensed and authorised personnel are permitted to operate any vehicle.
    15. All vehicles shall observe the site speed limits as indicated by local signage.
    16. Vehicles left unattended shall be securely braked, the engine switched off and ignition keys removed.
    17. Hand held mobile telephones shall not be used whilst any vehicle or plant is being operated.
    18. Ladders shall only be used as a means of access or for very simple, short duration tasks.
    19. Where ladders are used, they shall be of a suitable industrial standard, in good condition and subject to regular formal inspection.
    20. 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.
    21. 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.
    22. 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.
  1. **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.
  2. **Other Legislation** 
     1. The Contractor shall comply with all relevant statutory and other provisions relating to the Service.
  3. **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.
  4. **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.
  5. **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.
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 have professional indemnity insurance in an amount for each and every claim, act or occurrence or series of claims, acts or occurrences which is sufficient to cover its liabilities under this Call Off Contract.
   5. 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 – 4 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 below 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.
   14. Where the Company is late in paying invoices for monies owed to the Contractor, where the Company has still not paid 14 days after receiving a written notice identifying the missing payment, the Contractor shall have the right to suspend the Service until the invoices are paid.
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. The Company shall not unreasonably withhold or delay its consent for the provision of the Service to be sub-contracted.
       3. Clause 10.1 of the Dynamic Purchasing System Agreement shall still be in force in the event that the Contractor sub-contracts the provision of the Service with consent from the Company as per clause 15.2.2 above.
    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 19.2 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 19.3 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 19.2 to 19.4, 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 19.2 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 19.6 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 19.6 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 20.3 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 20.1 or 20.2, 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 additional 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 21, shall pay to the Contractor any balance due.
  3. The rights of the Company under clause 20 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.
  4. The Contractor shall have the same rights as the Company under clause 19.1.1 to 19.1.7.

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 29 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.

**ANNEX 1**

**SPECIAL CONDITIONS**

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

1. For the list of exclusion please see <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf> [↑](#footnote-ref-1)
2. See PCR 2015 regulations 71 (8)-(9) [↑](#footnote-ref-2)
3. See EU definition of SME <https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en> [↑](#footnote-ref-3)
4. UK companies, Societates European (SEs) and limited liability partnerships (LLPs) will be required to identify and record the people who own or control their company. Companies, SEs and LLPs will need to keep a PSC register, and must file the PSC information with the central public register at Companies House. [See PSC guidance](https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships). [↑](#footnote-ref-4)
5. Central Government contracting authorities should use this information to have the PSC information for the preferred supplier checked before award. [↑](#footnote-ref-5)
6. [See Action Note 8/16 Updated Standard Selection Questionnaire](https://www.gov.uk/government/collections/procurement-policy-notes) [↑](#footnote-ref-6)