

Dated

8th April 2019

Weed Control Programme In The City Of Bristol

VOLUME 2 – TERMS AND CONDITIONS

between

Bristol Waste Company

and

INSERT CONTRACTOR

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1. Bristol Waste Company Variation 39

2. CONTRACTOR VARIATION 40

**THIS AGREEMENT** is dated …………

Parties

1. Bristol Waste Company incorporated and registered in England and Wales with company number 09472624 whose registered office is at Albert Road Depot, Albert Road, Bristol, BS2 0XS (BWC).
2. INSERT CONTRACTOR incorporated and registered in England and Wales with company number INSERT NUMBER whose registered office is at INSERT ADDRESS (Supplier).

Background

1. BWC is a Teckal Company owned by Bristol City Council and as part of the contract with the Council, BWC has the responsibility for Street Cleansing Services. BWC wish to engage a Supplier to provide Weed Spaying services throughout the City as part of BWC’s Street Cleansing Services.

Agreed terms

# Definitions and Interpretation

## The definitions and rules of interpretation in this clause apply in this agreement.

Achieved KPIs**:** in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 2).

Agreement: this contract;

Associated Company**:** any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.

Authorised Representatives**:** the persons respectively designated as such by BWC and the Supplier, the first such persons being Vicki May, Hartcliffe Depot, Hartcliffe Way, Hartcliffe, Bristol, BS3 5RN

Bribery Act**:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Charges**:** the charges which shall become due and payable by BWC to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 4.

Commencement Date**:** the date of this agreement.

Commercially Sensitive Information**:** the information listed in Schedule 5 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to BWC that, if disclosed by BWC, would cause the Supplier significant commercial disadvantage or material financial loss.

Consistent Failure**:** shall have the meaning set out in Part 2 of Schedule 2.

Contract Year**:** a period of 12 months, commencing on the Commencement Date.

Data Controller: take the meaning given in the GDPR.

**Data Loss Event**​: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach. Data Subject Access Request​: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Data Processor**:** take the meaning given in the GDPR.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Legislation**:** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [​subject to Royal Assent​] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Officer: take the meaning given in the GDPR.

Data Subject: take the meaning given in the GDPR.

Default Notice**:** is defined in clause 6.2.

Dispute Resolution Procedure**:** the procedure set out in clause 14.

DPA 2018: Data Protection Act 2018

EIRs**:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Exit Management Plan**:** the plan set out in Schedule 8.

FOIA**:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure**:** any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679)

Goods: the goods to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 1.

Health and Safety Policy**:** the health and safety policy of BWC as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

Information**:** has the meaning given under section 84 of FOIA.

Initial Term**:** the period commencing on the Commencement Date and ending on the 2nd anniversary of the Commencement Date.

Insolvency Event**:** where:

### the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

### the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

### a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);

### an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);

### the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

### the Supplier (being an individual) is the subject of a bankruptcy petition or order;

### a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

### any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);

### the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

### the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

Intellectual Property**:** any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

KPIs**:** the key performance indicators set out in Schedule 2.

Law**:** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply; Contractor Personnel​: means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

LED: Law Enforcement Directive (Directive (EU) 2016/680)

Management Reports**:** the reports to be prepared and presented by the Supplier in accordance with clause 12

Necessary Consents**:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.

Payment Plan**:** the plan for payment of the Charges as set out in Schedule 4.

Personal Data**:** take the meaning given in the GDPR.

Personal Date Breach: take the meaning given in the GDPR.

Prohibited Act**:** the following constitute Prohibited Acts:

### to directly or indirectly offer, promise or give any person working for or engaged by BWC a financial or other advantage to:

#### induce that person to perform improperly a relevant function or activity; or

#### reward that person for improper performance of a relevant function or activity;

### to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;

### committing any offence:

#### under the Bribery Act;

#### under legislation or common law concerning fraudulent acts;

#### defrauding, attempting to defraud or conspiring to defraud BWC.

### any activity, practice or conduct which would constitute one of the offences listed under clause 1.1(m), if such activity, practice or conduct had been carried out in the UK.

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it. Sub-processor​: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement

Remediation Notice**:** a notice served by BWC in accordance with clause 24.1(a).

Replacement Services**:** any services that are identical or substantially similar to any of the Services and which BWC receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by BWC internally or by any Replacement Supplier.

Replacement Supplier**:** any third party supplier of Replacement Services appointed by BWC from time to time.

Request for Information**:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Service Failure**:** a failure by the Supplier to provide the Services in accordance with any Target KPI.

Supplier Party**:** the Supplier's agents and contractors, including each Sub-Contractor.

Supplier's Personnel**:** all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Supplier's Tender**:** the tender submitted by the Supplier in the Service Delivery Plan and Pricing Schedule and other associated documentation set out in Schedule 3.

Services**:** the services and goods to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 1,

Sub-Contract**:** any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor**:** the contractors or suppliers that enter into a Sub-Contract with the Supplier.

Term**:** the period of the Initial Term as may be varied by:

### any extensions to this agreement which are agreed pursuant to clause 3; or

### the earlier termination of this agreement in accordance with its terms.

Termination Date**:** the date of expiry or termination of this agreement.

Termination Payment Default**:** is defined in Schedule 4.

Working Day**:** Monday to Friday, excluding any public holidays in England and Wales.

## Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

## A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

## The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.

## A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## Words in the singular shall include the plural and vice versa.

## A reference to one gender shall include a reference to the other genders.

## A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## A reference to **writing** or **written** includes e-mail.

## Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

## A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.

## References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

## Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

### the clauses of the agreement;

### Schedule 1 to this agreement;

### the remaining schedules to this agreement .

Commencement and duration

# Term

This agreement shall take effect on the Commencement Date and shall continue for the Term.

# Extending the initial term

## BWC may extend this agreement beyond the Initial Term by a further period or periods of up to 24 months (Extension Period). If BWC wishes to extend this agreement, it shall give the Supplier at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period.

## If BWC gives such notice then the Term shall be extended by the period set out in the notice.

## If BWC does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 28 shall apply.

# Variation

Any variation to this agreement shall be agreed between the parties and shall be recorded in writing.

# Due diligence and Supplier's warranty

## The Supplier acknowledges and confirms that:

### it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked BWC all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;

### it has received all information requested by it from BWC pursuant to clause 5.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;

### it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of BWC pursuant to clause 5.1(b);

### it has raised all relevant due diligence questions with BWC before the Commencement Date; and

### it has entered into this agreement in reliance on its own due diligence.

## Save as provided in this agreement, no representations, warranties or conditions are given or assumed by BWC in respect of any information which is provided to the Supplier by BWC and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

## The Supplier:

### as at the Commencement Date, warrants and represents that all information contained in the Supplier's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to BWC prior to execution of the agreement; and

### shall promptly notify BWC in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by BWC during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.

## The Supplier shall not be entitled to recover any additional costs from BWC which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to BWC by the Supplier in accordance with clause 5.3(b) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of BWC and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from BWC.

## Nothing in this clause 5 shall limit or exclude the liability of BWC for fraud or fraudulent misrepresentation.

The services

# Supply of services

## The Supplier shall provide the Goods and Services to BWC with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.

## In the event that the Supplier does not comply with the provisions of clause 6 in any way, BWC may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a Default Notice).

## On service of a Default Notice BWC may:

### require the Supplier to remove from performance of this agreement any Provider's Personnel whose acts or omissions have caused the Default;

### require the Supplier to rectify the Default within 5 days; or

### immediately terminate this agreement.

# KPIs

## Where any Service is stated in Schedule 2 to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the KPI in respect of that Service is Achieved.

## As existing Services are varied and new Services are added, the KPIs for the same will be determined and included within Schedule 2.

## The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 12.

## In the event that any Achieved KPI falls short, without prejudice to any other rights BWC may have, the provisions of clause 24.1(b) shall apply.

# Service standards

Without prejudice to clause 6, the Supplier shall provide the Services, or procure that they are provided:

### with reasonable skill and care and in accordance with the best practice prevailing in the industry from time to time;

### in all respects in accordance with Schedule 1; and

### in accordance with all Applicable Laws.

# Compliance

## The Supplier shall ensure that all Necessary Consents are in place to provide the Services and BWC shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.

## Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.

## The Supplier shall perform its obligations under this agreement (including those in relation to the Services) in accordance with:

### all applicable Law regarding health and safety; and

### the Health and Safety Policy whilst at BWC Premises.

## Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at BWC Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## Without limiting the general obligation set out in clause 9 , the Supplier shall (and shall procure that the Supplier's Personnel shall):

### perform its obligations under this agreement (including those in relation to the Services) in accordance with:

#### all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

#### BWC’s equality and diversity policy as provided to the Supplier from time to time; and

#### any other requirements and instructions which BWC reasonably imposes in connection with any equality obligations imposed on BWC at any time under applicable equality law; and

### take all necessary steps, and inform BWC of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

### at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as BWC requests so as to enable BWC to comply with its obligations under the Human Rights Act 1998.

Charges and payment

# Payment

## In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, BWC shall pay the Charges to the Supplier in accordance with the Payment Plan.

## The Supplier shall invoice BWC for payment of the Charges at the time the Charges are expressed to be payable in accordance with the Payment Plan. All invoices shall be directed to BWC's Authorised Representative. Where the Supplier submits an invoice to BWC in accordance with clause 10.2, BWC will consider and verify that invoice within 7 days.

## BWC shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which BWC has determined that the invoice is valid and undisputed.

## Where BWC fails to comply with clause 10.2, the invoice shall be regarded as valid and undisputed 7 days after the date on which it is received by BWC.

## Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

### provisions having the same effect as clause 10.2 to clause 10.4 of this agreement; and

### a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 10.2 to clause 10.4 of this agreement.

In this clause 10.5, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from BWC in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

## Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 14. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 14 days after resolution of the dispute between the parties.

## Subject to clause 10.6, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 24.4 for failure to pay undisputed charges.

## The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by BWC following delivery of a valid VAT invoice. The Supplier shall indemnify BWC against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on BWC at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

## The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to BWC pursuant to this agreement. Such records shall be retained for inspection by BWC for 6 years from the end of the Contract Year to which the records relate.

## BWC may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to BWC.

## If BWC wishes to set off any amount owed by the Supplier to BWC against any amount due to the Supplier pursuant to clause 10.10 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out BWC's reasons for withholding or retaining the relevant Charges.

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

Staff

# personnel used to provide the services

## At all times, the Supplier shall ensure that:

### each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

### there is an adequate number of Supplier's Personnel to provide the Services properly;

### only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and

### all of the Supplier's Personnel comply with all of BWC's policies including those that apply to persons who are allowed access to the applicable BWC's Premises.

## BWC may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.

## The Supplier shall replace any of the Supplier's Personnel who BWC reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

## The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and shall provide information to BWC as BWC reasonably requests on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

## The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

Contract management

# Reporting and meetings

## The Supplier shall provide the management reports in the form and at the intervals set out by the BWC Authorised Representative.

# Monitoring

## BWC may monitor the performance of the Services by the Supplier.

## The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with BWC in carrying out the monitoring referred to in clause 13.1 at no additional charge to BWC.

# Dispute resolution

## If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

### either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

### if the Authorised Representatives are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to BWC's Operations Director and the Supplier's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it; and

### if BWC's Operations Director and the Supplier's [SENIOR OFFICER TITLE] are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 14 days after the date of the ADR notice.

## The commencement of mediation shall not prevent the parties commencing or continuing proceedings in relation to the Dispute under clause 39 which clause shall apply at all times.

# Sub-Contracting and assignment

## Subject to clause 15.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of BWC.

## In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:

### remain responsible to BWC for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

### impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and

### provide a copy, at no charge to BWC, of any such Sub-Contract on receipt of a request for such by BWC's Authorised Representative.

## BWC shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by BWC.

## Provided that BWC has given prior written consent, the Supplier shall be entitled to novate the agreement where:

### the specific change in contractor was provided for in the procurement process for the award of this agreement;

### there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

Liability

# Indemnities

The Supplier shall indemnify and keep indemnified BWC against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by BWC or its Representatives.

# Limitation of liability

## Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.

## Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

### fraud or fraudulent misrepresentation;

### death or personal injury caused by its negligence;

### breach of any obligation as to title implied by statute; or

### any other act or omission, liability for which may not be limited under any applicable law.

# Insurance

## The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

### public liability insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim or series of claims;

### employer's liability insurance with a limit of indemnity of not less than £10,000,000 (ten million pounds)in relation to any one claim or series of claims;

(the Required Insurances) The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

## The Supplier shall give BWC, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

## If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, BWC may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

## The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

Information

# Freedom of information

## The Supplier acknowledges that BWC is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

### provide all necessary assistance and cooperation as reasonably requested by BWC to enable BWC to comply with its obligations under the FOIA and EIRs;

### transfer to BWC all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

### provide BWC with a copy of all Information belonging to BWC requested in the Request For Information which is in its possession or control in the form that BWC requires within 5 Working Days (or such other period as BWC may reasonably specify) of BWC's request for such Information; and

### not respond directly to a Request For Information unless authorised in writing to do so by BWC.

## The Supplier acknowledges that BWC may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. BWC shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) BWC shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

# Data protection

## The Parties acknowledge that for the purposes of the Data Protection Legislation, Bristol Waste Company is the Controller and the Contractor is the Processor.

## The Contractor shall notify Bristol Waste Company immediately if it considers that any of Bristol Waste Company's instructions infringe the Data Protection Legislation.

## The Contractor shall provide all reasonable assistance to Bristol Waste Company in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of Bristol Waste Company, include:

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

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

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

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

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

### process that Personal Data only as directed by Bristol Waste Company, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify Bristol Waste Company before processing the Personal Data unless prohibited by Law;

### ensure that it has in place Protective Measures, which have been reviewed and approved by Bristol Waste Company as appropriate to protect against a Data Loss Event having taken account of the:

#### nature of the data to be protected;

#### harm that might result from a Data Loss Event;

#### state of technological development; and

#### cost of implementing any measures;

### ensure that :

#### the Contractor Personnel do not process Personal Data except in accordance with this Agreement;

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

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

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

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

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

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

#### Bristol Waste Company or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by Bristol Waste Company;

#### the Data Subject has enforceable rights and effective legal remedies;

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

#### the Contractor complies with any reasonable instructions notified to it in advance by Bristol Waste Company with respect to the processing of the Personal Data;

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

## Subject to clause 20.6, the Contractor shall notify Bristol Waste Company immediately if it:

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

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

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

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

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

### becomes aware of a Data Loss Event.

## The Contractor’s obligation to notify under clause 20.5 shall include the provision of further information to Bristol Waste Company in phases, as details become available.

## Taking into account the nature of the processing, the Contractor shall provide Bristol Waste Company with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 20.5 (and insofar as possible within the timescales reasonably required by Bristol Waste Company) including by promptly providing:

### Bristol Waste Company with full details and copies of the complaint, communication or request;

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

### Bristol Waste Company, at its request, with any Personal Data it holds in relation to a Data Subject;

### assistance as requested by Bristol Waste Company following any Data Loss Event;

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

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

### Bristol Waste Company determines that the processing is not occasional;

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

### Bristol Waste Company determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

## The Contractor shall allow for audits of its Data Processing activity by Bristol Waste Company or Bristol Waste Company’s designated auditor.

## The Contractor shall designate a data protection officer ​if ​required by the Data Protection Legislation​.

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

### notify Bristol Waste Company in writing of the intended Sub-processor and processing;

### obtain the written consent of Bristol Waste Company;

### enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 20​ such that they apply to the Sub-processor; and

### provide Bristol Waste Company with such information regarding the Sub-processor as Bristol Waste Company may reasonably require.

## The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

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

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

# Confidentiality

## Subject to clause 21.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

## Clause 21.1 shall not apply to any disclosure of information:

### required by any applicable law, provided that clause 19.2 shall apply to any disclosures required under the FOIA or the EIRs;

### that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;

### where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 21.1;

### by BWC of any document to which it is a party and which the parties to this agreement have agreed contains no commercially sensitive information;

### to enable a determination to be made under clause 14;

### which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

### by BWC to any other department, office or agency of the Government; and

### by BWC relating to this agreement and in respect of which the Supplier has given its prior written consent to disclosure.

## On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of BWC's employees, rate-payers or service users, are delivered up to BWC or securely destroyed.

# Audit

## During the Term and for a period of 6 (six) years after the Termination Date, BWC may conduct or be subject to an audit for the following purposes:

### to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;

### to review the integrity, confidentiality and security of any data relating to BWC or any service users;

### to review the Supplier's compliance with the DPA, the FOIA, in accordance with clause 20 (Data Protection) and clause 19 (Freedom of Information) and any other legislation applicable to the Services;

### to review any records created;

### to review any books of account kept by the Supplier in connection with the provision of the Services;

### to carry out the audit and certification of BWC's accounts;

### to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which BWC has used its resources;

### to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

## Except where an audit is imposed on BWC by a regulatory body, BWC may not conduct an audit under this clause 22 more than twice in any calendar year.

## BWC shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

## Subject to BWC's obligations of confidentiality, the Supplier shall on demand provide BWC and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

### all information requested by the above persons within the permitted scope of the audit;

### reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and

### access to the Supplier's Personnel.

## BWC shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.

## The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse BWC for all BWC's reasonable costs incurred in the course of the audit.

## If an audit identifies that:

### the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to BWC about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

### BWC has overpaid any Charges, the Supplier shall pay to BWC the amount overpaid within 20 days. BWC may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and

### BWC has underpaid any Charges, BWC shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by BWC if this was due to a default by the Supplier in relation to invoicing within 20 days.

# Intellectual property

## In the absence of prior written agreement by BWC to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:

### in the course of performing the Services; or

### exclusively for the purpose of performing the Services,

shall vest in BWC on creation.

## The Supplier shall indemnify BWC against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by BWC's acts or omissions.

Termination

# Termination for breach

## BWC may terminate this agreement in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:

### if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, BWC may only terminate this agreement under this clause 24.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from BWC (a Remediation Notice) to do so;

### if a Consistent Failure has occurred;

### if there is an Insolvency Event.

### if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010.

### if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

### Corruption under the Corruption Act 1989 – 1916 and Section 117 of the Local Government Act 1972; any breach of the Bribery Act 2010; and/or the commission of any of the activities that would bar the contractor from being invited to tender under EU or national legislation

## BWC may terminate this agreement in accordance with the provisions of clause 26 and clause 27.

## If this agreement is terminated by BWC for cause such termination shall be at no loss or cost to BWC and the Supplier hereby indemnifies BWC against any such losses or costs which BWC may suffer as a result of any such termination for cause.

## The Supplier may terminate this agreement in the event that BWC commits a Termination Payment Default by giving 30 days' written notice to BWC. In the event that BWC remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

# Termination on notice

Without affecting any other right or remedy available to it, BWC may terminate this agreement at any time by giving three (3) months' written notice to the Supplier.

# Force majeure

## Subject to the remaining provisions of this clause 26, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.

## In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:

### give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

### use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

### resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

## A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

## The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.

## As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Supplier is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event.

## The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

## BWC may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 28 Working Days.

# Prevention of bribery

## The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Commencement Date:

### committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

## The Supplier shall not during the term of this agreement:

### commit a Prohibited Act; and/or

### do or suffer anything to be done which would cause BWC or any of BWC's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

## The Supplier shall during the term of this agreement:

### establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

### keep appropriate records of its compliance with its obligations under clause 27.3(a) and make such records available to BWC on request.

## The Supplier shall immediately notify BWC in writing if it becomes aware of any breach of clause 27.1 and/or clause 27.2, or has reason to believe that it has or any of the Supplier's Personnel have:

### been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

### received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

## If the Supplier makes a notification to BWC pursuant to clause 27.4, the Supplier shall respond promptly to BWC's enquiries, co-operate with any investigation, and allow BWC to audit any books, records and/or any other relevant documentation in accordance with clause 22.

## If the Supplier is in Default under clause 27.1 and/or clause 27.2, BWC may by notice:

### require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the Default; or

### immediately terminate this agreement.

## Any notice served by BWC under clause 27.6 shall specify the nature of the Prohibited Act, the identity of the Party who BWC believes has committed the Prohibited Act and the action that BWC has elected to take (including, where relevant, the date on which this agreement shall terminate).

# Consequences of termination

## On the expiry of the Term or if this agreement is terminated in whole or in part for any reason the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with BWC to ensure an orderly migration of the Services to BWC or, at BWC's request, a Replacement Supplier.

## On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by BWC before such completion) the Supplier shall procure that all data and other material belonging to BWC (and all media of any nature containing information and data belonging to BWC or relating to the Services), shall be delivered to BWC forthwith and the Supplier's Authorised Representative shall certify full compliance with this clause.

## The provisions of clause 7.3 (provision of records), clause 16 (Indemnities), clause 18 (Insurance), clause 19 (Freedom of Information), clause 20 (Data Protection), clause 22 (Audit), clause 24 (Termination for Breach) and this clause 28 (Consequences of termination) shall survive termination or expiry of this agreement.

General provisions

# Non-solicitation

Neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

# Waiver

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

# Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

# Severability

## If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

## If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

# Partnership or agency

## Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

## Each party confirms it is acting on its own behalf and not for the benefit of any other person.

# Third party rights

## Except as expressly provided a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

# Publicity

The Supplier shall not:

### make any press announcements or publicise this agreement or its contents in any way; or

### use BWC's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory BWC, any court or other BWC of competent jurisdiction, without the prior written consent of BWC.

# Notices

## Any notice or other communication given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

## Any notice or communication shall be deemed to have been received:

### if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

### if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

### if sent by fax, at 9.00 am on the next Working Day after transmission.

## This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

# Entire agreement

## This agreement, the schedules and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

# Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

# Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation including non-contractual disputes or claims shall be governed by and construed in accordance with the law of England and Wales.

# Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

|  |  |
| --- | --- |
| Signed by INSERT DIRECTOR  for and on behalf of BRISTOL WASTE COMPANY | .......................................  Director |
| Signed by  for and on behalf of INSERT COMPANY NAME | .......................................  Director |

1. Specification

INSERT VOL 3 SPEC

1. Performance regime
2. KPIs
   1. The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are contained in the below table.

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Bristol Waste Company - Contract Management & KPI Tracker – Weed Spraying** | | | | | | | | | | | |
|  |  | | |  |  |  | **Review Month -** |  |  |  | |
| Item | KPI | | | | | | | |
| 1. | Production of daily activity sheets that details the streets / areas completed and the streets / areas missed. | | | | | | | |
| 2. | Submitting of the daily activity sheets the following working day. | | | | | | | |

* 1. The Supplier shall monitor its performance against each KPI and shall send BWC a report detailing the Achieved KPIs.

1. Consistent failure

In this agreement, consistent failure shall mean:

* + 1. the Supplier repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

1. Service Plan and Pricing Schedule

Insert VOLUME 4

1. Charges and Payment
2. Payment Plan

A single monthly consolidated invoice will be sent to the Bristol Waste Company, Albert Road Depot, Albert Road, Bristol, BS2 0XS detailing the works carried out.

1. Termination Payment Default

In the event that at any time undisputed Charges have been overdue for payment for a period of 60 days or more, BWC will have committed a Termination Payment Default.

1. Commercially sensitive information

[DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS COMMERCIALLY SENSITIVE]

1. Variation Procedure
2. Bristol Waste Company Variation
   1. If Bristol Waste Company requires a Variation it shall serve a Bristol Waste Company Variation Notice on the Contractor in accordance with the provisions of this paragraph 1.
   2. Bristol Waste Company Variation Notice shall:
      1. set out the Variation required in sufficient detail to enable the Contractor to calculate an Estimate in accordance with clause 3.3.2 of the Contract; and
      2. specify the time period for the Contractor to provide the Estimate (and in setting such period Bristol Waste Company shall pay due regard to the nature of the proposed Variation).
   3. The Contractor shall as soon as practicable and in any event before the expiry of the period referred to in paragraph 1.2.2 above, deliver to Bristol Waste Company an Estimate together with a statement by the Contractor confirming any:
      1. impact on the provision of the Services;
      2. amendment(s) required to the Contract;
      3. loss of revenue that may result; and
      4. additions or variations required to any Necessary Consents,

as a result of the Variation proposed by Bristol Waste Company.

* 1. As soon as practicable (but in any event within 30 days) after Bristol Waste Company receives the Estimate and statement, the parties shall discuss and agree the matters set out therein, including, but without limitation, the work to be undertaken, changes in the Services and amendments to the Contract Price.
  2. If the parties cannot agree the contents of the Estimate then Bristol Waste Company shall either:
     1. withdraw Bristol Waste Company Variation Notice; or
     2. refer the dispute to be determined in accordance with clause 17 (Dispute Resolution).
  3. As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to clause 17 (Dispute Resolution), Bristol Waste Company shall either:
     1. confirm in writing the Estimate (including any modification or amendments made to it); or
     2. withdraw Bristol Waste Company Variation Notice.

1. CONTRACTOR VARIATION
   1. If the Contractor wishes to introduce a Variation, it must serve a Contractor Variation Notice on Bristol Waste Company in accordance with the provisions of this paragraph 2.
   2. The Contractor Variation Notice must:
      1. set out the proposed Variation in sufficient detail to enable Bristol Waste Company to evaluate it;
      2. specify the Contractor’s reasons for proposing the Variation;
      3. indicate whether an adjustment to the Contract Price is proposed and if so to give a detailed Estimate calculated in accordance with clause 3.3.2 of the Contract;
      4. indicate if there are any dates by which a decision by Bristol Waste Company is critical; and
      5. set out the timetable for implementing the proposed Variation.
   3. Bristol Waste Company shall evaluate the Contractor’s proposed Variation in good faith, taking account all relevant issues, including whether:
      1. the Variation is required as a result of the operation of clause 3.1 (Bristol Waste Company Variations) or a Change in Law;
      2. a change in the Contract Price will occur;
      3. the Variation affects the quality of the Services or the likelihood of successful delivery of the Services;
      4. the Variation will interfere with the relationship of Bristol Waste Company with third parties;
      5. the financial strength of the Contractor is sufficient to perform the proposed Variation; and
      6. whether the Variation materially affects the risks or costs to which Bristol Waste Company is exposed.
   4. As soon as practicable after receiving the Contractor’s Variation Notice the parties shall meet and discuss the matters referred to in it. During their discussions Bristol Waste Company may propose modifications or accept or (subject to clause 3.2.3 of the Contract) in its absolute discretion reject the Variation proposed by in the Contractor Variation Notice.
   5. If Bristol Waste Company accepts the Contractor Variation Notice (with or without modification), the relevant Variation shall be implemented by the Contractor within such reasonable period as shall be specified by Bristol Waste Company in its acceptance. Within this period, the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend the Contract which are necessary to give effect to the Variation.
   6. If Bristol Waste Company rejects the Contractor Variation Notice, it shall not be obliged to give reasons for its rejection and the Contractor shall not be entitled to refer the matter for determination under clause 17 (Dispute Resolution).