**Dated 2018**

**(1) THE COUNCIL OF THE CITY OF STOKE-ON-TRENT**

**and**

**(2) [SUPPLIER]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

# DEED OF AGREEMENT

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**for the Purchase of**

**4 x Mobile (Trailer Mounted) Hot & Cold Water High Pressure Cleaners**

 Legal Services

 PO Box 631

 Civic Centre

 Glebe Street

 Stoke-on-Trent

 ST4 1HH

52507/RO

**WP REF: CONTSERV.DOC (LTHIS AGREEMENT** is made as a Deed on the day of 2018 **BETWEEN**

**(1) THE COUNCIL OF THE CITY OF STOKE-ON-TRENT** of PO Box 631 Civic Centre Glebe Street Stoke-on-Trent ST4 1HH (hereinafter referred to as “the Council”); and

**(2) [SUPPLIER] (**company no ) whose registered address is situated at [ADDRESS] (hereinafter referred to as “the Supplier”)

**each a “Party” and together the “Parties”**

**WHEREAS:**

(A) The Supplier carries on the business of selling the Machinery.

(B) The Council wishes to buy, and the Supplier wishes to sell, the Machinery subject to the terms and conditions set out in this Agreement.

(C) There are annexed and incorporated into this Agreement the following documents

 Appendix 1a The Specification

 Appendix 1b The Specification Compliance Document

 Appendix 2 The Tender

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

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

“Authorised Officer” means the person nominated by the Council from time to time as being authorised to administer this Agreement on behalf of the Council or such person as may be nominated by the Authorised Officer to act on its behalf

“Commencement Date” means the date hereof

“Completion Date” means the expiry of the Warranty Period

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

“Machinery” means the machinery including the associated equipment and other items described in the Specification

 “Operating Procedures” means any procedures the Council requires the Supplier to adhere to and to which the Supplier has been notified by the Council

“Order” means a written order for the Machinery by the Council on the Council’s official order form in respect of the Machinery purchased pursuant to this Agreement

“Price” means the price of the Machinery as set out in the Tender

 “Recipient” means an officer of the Council authorised to take delivery of the Machinery

“Service” means training provided by the Supplier in respect of the operation of the Machinery as set out in the Specification

 “Warranty Period” means a period of 2 years commencing on the date of delivery of the Machinery

 “Working Day” means Monday to Friday excluding Bank and Public holidays

* 1. References to numbered clauses or appendices are to the relevant numbered clauses or appendices in this Agreement;
	2. The headings are included for ease of reference only and shall not affect the interpretation or construction of the Agreement;
	3. References to the singular shall include the plural and references to the masculine shall include the feminine and the neuter and vice versa in each case;
	4. References to a statute statutory instrument regulation order or quality standard shall be construed as a reference to such statute statutory instrument regulation order or quality standard as amended or re-enacted from time to time;

1.6 References to any person shall include natural persons and partnerships firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

1.7 In the event of any contradiction or inconsistency between the documents comprising this Agreement the following order of priority shall apply:

 (i) The Specification;

 (ii) The clauses hereunder;

 (iii) The Supplier’s Warranty;

 (iv) The Tender

1.8 The words “include” “includes” and “including” shall be construed without limitation;

1.9 No terms and conditions of the Supplier whether stated on an invoice in a catalogue or other
 literature shall apply supersede or vary any of the terms of this Agreement

**2 Contract Period**

 The Agreement shall take effect on the Commencement Date and shall expire on the Completion Date unless it is otherwise terminated in accordance with this Agreement (“the Contract Period”)

3. Supply of Machinery

* 1. The Supplier shall supply the Machinery to the Council in accordance with the Specification and all other provisions of this Agreement.
	2. Time shall be of the essence in respect of the Supplier’s obligations hereunder.
	3. The Supplier shall perform all its obligations under this Agreement with:
		1. appropriately experienced, qualified and trained personnel with all due skill, care and diligence; and

3.4.2 in accordance with Good Industry Practice.

* 1. This Agreement shall apply to the exclusion of all other terms and conditions which are not expressly incorporated herein and the Supplier undertakes that it shall make no attempt to vary any provision hereunder.
1. Quality

4.1 The Supplier warrants to the Council that the Machinery:

4.1.1 conforms in all respects with the Specification;

4.1.2 is of satisfactory quality (within the meaning of the Sale of Goods Act 1979)

4.1.3 is fit and sufficient for the purposes for which it is required by the Council being the purposes envisaged in the Specification as well as all other purposes envisaged by the documentation accompanying the Supplier’s tender as attached at Appendix 2;

4.1.4 is free from defects in design, materials and workmanship and remains so throughout the Warranty Period in accordance with and subject to the provisions of the warranty more fully described in the Specification;

4.1.5 does not infringe any intellectual property right of any third party; and

* + 1. complies with all applicable statutory and regulatory requirements.

4.2 The Supplier sells the Machinery with full title guarantee and free from all encumbrances.

4.3 The Supplier shall perform the Service in accordance with the Specification and the other
 provisions of this Agreement.

4.4 The provisions of this clause 4 shall survive the expiry or termination of this agreement
 howsoever arising

1. Delivery of the Machinery
	1. The Machinery shall be delivered on the date or dates specified in the Order or Orders. The Machinery shall be delivered to such locations within the administrative area of the city of Stoke-on-Trent as set out in the Order or Orders

5.2 Delivery of the Machinery shall be made free of charge and in strict accordance with any instructions specified by the Council and any Operating Procedures. Each delivery of Machinery must be accompanied by an official delivery note issued by or on behalf of the Supplier which shall specify the Order number date and details of the Machinery

5.3 The Machinery shall not be deemed to be delivered until the delivery note has been signed by the Authorised Officer or Recipient. A signed delivery note shall in no way prejudice the Council’s rights including without limitation the right to reject the Machinery, terminate this Agreement and/or sue for damages for breach of this Agreement by the Supplier.

5.4 Risk in the Machinery shall not pass to the Council until a delivery note has been signed in accordance with clause 5.3 above. If at any time after delivery has been effected the Machinery are rejected by the Council for any reason risk in the Machinery shall revert to the Supplier immediately upon the Council notifying the Supplier of such rejection of the Machinery

5.5 Title to the Machinery shall pass to the Council upon the Machinery being physically delivered to the Council.

1. Acceptance and Defective Machinery
	1. The Council shall not be deemed to have accepted any Machinery until it has had 15 Working Days following delivery to inspect them, or, in the case of a latent defect in the Machinery, following the latent defect becoming apparent.
	2. If any of the Machinery are not delivered on the date they are due to be delivered, or if the Supplier fails to comply with any of its obligations under clause 4 then the Council shall have the right to any one or more of the following remedies, whether or not it has accepted the Vehicle:

(a) to terminate this Agreement, subject to clause 6.3;

(b) to reject the Vehicle and return it to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Vehicle so returned shall be paid immediately by the Supplier, subject to clause 6.3;

(c) to reject the Vehicle and require the Supplier at the Supplier's expense to replace the rejected Vehicle, subject to clause 6.3;

(d) to require the Supplier, at the Supplier's expense, to remedy any defect in the Vehicle and carry out such other work as is necessary to ensure that the Vehicle complies in all respects with the requirements of this Agreement;

(e) to refuse to accept the delivery of the other Machinery, to the extent they are still to be delivered, without the Council incurring any liability to the Supplier;

(f) to claim damages for any other costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to carry out its obligations under this Agreement.

6.3 The above rights and remedies shall also apply to any repaired or replacement Machinery supplied by the Supplier.

6.4. If the Supplier fails to promptly replace or repair rejected Machinery in accordance with clause [6.2(c) and (d)], the Council may, without affecting its rights under clause [6.2(a), (b), (e) and (f)], obtain substitute products from a third party supplier, or have the rejected Machinery repaired by a third party, and the Supplier shall reimburse the Council for the costs it incurs in doing so.

6.5. The Council’s rights and remedies under this clause 6 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality and fitness for purpose implied into this agreement by the Sale of Goods Act 1979.

6.6. For the avoidance of doubt, the Supplier undertakes to the Council that it shall not attach additional or alternative conditions to any delivery of the Machinery. No signature by the Council of any delivery or acceptance note shall have the effect of depriving the Council of any of its rights under this Agreement.

6.7 Where the Supplier enters into a sub-contract with a third party for the purpose of performing any part or all of this Agreement it shall ensure a provision is included in such sub-contract which requires payment to be made of all undisputed sums due by the Supplier to the third party within a specified period not exceeding 30 days from the receipt of a valid invoice

7. Price and Payment

7.1. The Price of the Machinery and any services provided under this Agreement shall be the Price and it shall be fixed and all-inclusive subject to clause 7.2 below. For the avoidance of doubt the Price shall include all packing, insurance, carriage, assembly and installation of the Machinery to the Council, and (subject to clause 7.2) no extra charges shall be permitted.

7.2. The Price is exclusive of Value Added Tax (VAT) which shall be due and payable by the Council to the Supplier at the rate then prevailing on the production of a valid VAT invoice.

7.3. The Supplier may invoice the Council for the Price after the expiry of 30 Working Days following delivery of all of the Machinery. The Council will pay the invoice within 30 days of receipt of the Supplier’s invoice. The payment by the Council to the Supplier shall take the form of one full payment upon production by the Suppliers invoice.

7.4. Payment of the Price and VAT shall not be made unless the Council has been provided with an invoice showing the relevant Order number, date, delivery number, Price and any VAT payable.

7.5. If a Party fails to make any payment to the other Party under this Agreement by the due date for payment (“Due Date”) then the defaulting Party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England Base Rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment. This clause shall not apply to payments which the defaulting party disputes in good faith.

7.6. Wherever under this Agreement or any other contract between the Council and the Supplier any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Council in respect of any breach of the contract), the Council may deduct that sum from any sum then due, or which at any time may become due to the Supplier under this Agreement.

7.7 Where the Supplier enters into a contract with any third party for the purpose of performing its obligations hereunder it shall ensure that a term is included in such a sub-contract that requires payment to be made of undisputed sums by the Supplier to that third party within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract.

1. Termination
	1. The Council may terminate this Agreement at its discretion at any time before delivery of the Machinery by notice in writing to the Supplier whereupon the Supplier shall discontinue all work on this Agreement. The Council shall pay the costs which the Supplier has incurred provided that the Supplier uses its reasonable endeavours to mitigate any such costs and provided also that such costs shall not exceed the Price.

8.2 The Council may terminate this Agreement in whole or in part by written notice to the Supplier with immediate effect if the Supplier breaches this Agreement and if:

 8.2.1 the Supplier has not remedied the breach to the satisfaction of the Council within 10
 Working Days after issue of a written notice specifying the breach and requesting it
 to be remedied;

 8.2.2 the breach is not in the opinion of the Council, capable of remedy;

8.3 The Council may terminate this Agreement by giving the Supplier notice in writing with
 immediate effect if:

* + 1. any circumstances arise which give reasonable grounds for the Council to believe that the Supplier has or may become incapable of performing its obligations under this Agreement
		2. the Supplier makes a composition or arrangement with its creditors or becomes bankrupt or (being a company) makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 1985 or the Insolvency Act 1986 (as the case may be) or has a provisional liquidator appointed or has a winding up order made or passes a resolution for voluntary winding up (except for the purposes of amalgamation or reconstruction) or under the Insolvency Acts 1986 has an administrator or an administrative receiver appointed;
		3. an award for ineffectiveness of this Agreement is made under the Public Contracts Regulations 2015 or legal proceedings seeking such an award are brought against the Council;
		4. the Supplier or its employees, servants, agents or sub-contractors has directly offered, promised or given to any person working for or engaged by the Council 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 or 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. The attention of the Supplier is drawn to the criminal offences under the Bribery Act 2010

8.4. If the Council fails to pay to the Supplier undisputed sums of money when due, the Supplier may notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Supplier may terminate this Agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under this Agreement.

8.5. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain survive the expiry or cessation of this Agreement howsoever arising.

9. Insurance and Indemnity

9.1. Subject to clauses 9.2 and 10 below, the Supplier hereby indemnifies and keeps indemnified the Council from and against any damage loss costs claims demands expenses liabilities and proceedings arising under any statute or at common law in respect of loss injury or damage to any property or in respect of personal injury to or the death of any person arising out of or in the course of or in connection with or caused by the carrying out of the Supplier’s obligations hereunder or as a consequence of a breach by the Supplier of the terms of this Agreement.

9.2. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of any person employed by the Council

9.3. Without prejudice to the foregoing the Supplier shall for the duration of this Agreement maintain insurance with a well-established insurance provider or underwriter of good repute with the following limits of indemnity for any one occurrence or series of occurrences arising out of any one event :-

 9.3.1 Employers’ Liability Insurance in respect of the Supplier’s Employees in compliance with the Employers’ Liability (Compulsory Insurance) Act 1969 and any order thereunder or amendment thereto to a limit of not less than ten million pounds

 9.3.2 Public & Products Liability Insurance in respect of any liability damage loss expense cost claim or proceedings in respect of personal injury to or death of any person or injury or damage to any property arising out of or in connection with the performance of the Service for a limit of indemnity of not less than five million pounds

9.4. In the event that the Supplier is or becomes in breach of any obligation under clause 9.3 the Council may at its discretion insure and deduct a sum equivalent to the amount paid or payable in respect of premiums from any monies due or shall become due hereunder to the Supplier or recover said monies from the Supplier as a debt.

9.5. For the avoidance of doubt, the indemnity given in favour of the Council under clause 9.1 above shall not be construed as excluding, limiting or circumscribing any other right which the Council may have to recover losses from the Supplier.

9.6. The provisions of this clause 9 shall survive the expiry or termination of this Agreement howsoever arising.

10. Limitation on liability

10.1. Neither party limits or excludes its liability for (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by its negligence; (c) breach of any obligation as to title implied by statute; or (d) any other act or omission for which that party is not, under applicable law, permitted to limit or exclude its liability; and

10.2 The Suppliers aggregate liability under this Agreement is limited to five million pounds

11 Compliance with Legislation/Council Policies

* 1. The Supplier shall at all times when visiting any Council site comply with:
		1. all relevant health and safety legislation including but not limited to the Control of Substances Hazardous to Health Regulations 2002, the Health and Safety at Work, etc Act 1974, the Factories Act 1961 and the Environmental Protection Act 1990;
		2. the Council’s Health and Safety Policy; and
		3. the instructions of the Authorised Officer

12 Freedom of Information

 The Supplier acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall promptly assist and cooperate with the Council to enable the Council to comply with these information disclosure requirements at no cost to the Council

1. Force Majeure

13.1 In the event that the performance of any obligation under this Agreement is prevented restricted or interfered with by reason of circumstances including but not limited to act of god fire flood civil disobedience governmental acts or regulation or industrial action (other than by the Parties employees) beyond the control of the Party obliged to perform it the Party so affected (upon giving prompt notice in writing to the other Party) shall be excused from the performance to the extent of the prevention restriction or interference but the Party so affected shall use all reasonable endeavours to avoid or remove the cause of non-performance and shall continue performance under this Agreement with the utmost dispatch whenever such cause is removed or diminished

13.2. If an event described in clause 13.1 prevents the affected Party from performing its obligations under the Agreement for a period in excess of one month then the other Party may terminate this Agreement by notice in writing with immediate effect without thereby incurring any liability to the other.

14 Notices

14.1 Any notice required or authorised to be given by either Party under this Agreement to the other Party shall be in writing and shall either be delivered personally or sent by first class pre-paid post or by electronic mail or facsimile transmission to the other Party at the address stated in this Agreement or such other address as may be specified by the Parties by notice to the other from time to time and shall be deemed duly served:

14.1.1 in the case of a notice delivered personally at the time of delivery; or

14.1.2 in the case of a notice sent by first class pre-paid post two clear Working Days after being posted; or

14.1.3 in the case of facsimile transmission if sent during normal business hours then at the time of that transmission and if sent outside normal business hours then on the next following Working Day provided (in each case) that a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next Working Day

14.2 Both Parties shall promptly notify the other upon any change of address or facsimile number occasioned during the Contract Period

15 Assignment and Third Parties

15.1 The rights and obligations under this Agreement are personal to the Parties and the Supplier shall not assign or transfer or sub-contract the whole or any part of this Agreement without the previous written consent of the Council

15.2 Where the Supplier enters into a sub-contract for the purposes of this Agreement it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due to the Supplier within a specified period not exceeding 30 days from the receipt of a valid invoice.

15.3 The Council may assign the benefit of this Agreement subject to notification to the Supplier

15.4 Nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it and the Contracts (Rights of Third Parties) Act 1999 shall not apply

16 Severance

 In the event that any clause or sub-clause hereunder shall be deemed to be invalid unlawful or unenforceable to any extent by any competent authority such clause or sub-clause shall to that extent be severed from the remainder of this Agreement which shall continue to prevail to the full extent permitted by law

17 Dispute Resolution

17.1 In the event of any dispute between the Parties arising out of or in connection with the Agreement, either Party may call a meeting of the Parties by service of not less than 5 days' written notice, and each Party agrees to procure that its representative together with any other Employee requested to attend by the Council (if any) shall attend any such meeting. The members of the meeting shall use their reasonable endeavours to resolve the dispute.

17.2. If any dispute referred to a meeting pursuant to clause 17.1 is not resolved at that meeting then either Party, by notice in writing to the other, may refer the dispute to director-level for resolution, and the Parties’ respective directors bearing managerial responsibility for this Agreement shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice (and, for these purposes, an Assistant Director of the Council shall be treated as a director).

17.3. If the directors fail to resolve the dispute in the allotted time, then either Party may commence or continue court proceedings in respect of such unresolved dispute or issue.

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

18 Waiver

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

19 Remedies Cumulative

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

20 Miscellaneous

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

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

20.3 The Supplier shall not be relieved of its obligations to perform the Service in accordance with the terms of the Agreement as the result of a change of law which comes into effect after the Commencement Date

20.4 Nothing in this Agreement shall be construed as constituting a partnership or contract of employment between the Council and the Supplier. Nothing in this Agreement shall be construed as constituting either Party as the agent of the other

20.5 This Agreement shall not be varied except by instrument in writing signed by the authorised representatives of the Parties

**IN WITNESS** whereof the Parties hereto have executed and delivered this Agreement as a Deed the day and the year first above written

 THE CORPORATE SEAL of the )

 **COUNCIL OF THE CITY OF** )

 **STOKE-ON-TRENT** was hereunto )

 affixed in the presence of:- )

Authorised Signatory )

Authorised Signatory )



Executed for and on Behalf )

of **[SUPPLIER]** )

acting by the signature of )

Director )

In the presence of )

Address )

APPENDIX 1A

THE SPECIFICATION

APPENDIX 1B

THE SPECIFICATION COMPLIANCE DOCUMENT

**APPENDIX 2**

**THE TENDER**