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**Durham County Council**

**Contract for Hire Operated Plant and Equipment**

**ITT Document 2 – Contract**

**Dynamic Purchasing System**

**Pro Contract Reference- DN303423**

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THIS CONTRACT is made on [                    ] 2017 BETWEEN:

(1) THE COUNCIL OF DURHAM of County Hall, Durham, DH1 5UL (the “Council”); and

(2) [THE PROVIDER] of [                    ] (Company No. [                    ]) whose registered office is at [                    ] (the “Provider”).

WHEREAS:

 (A) Pursuant to a notice published in the Official Journal of the European Union on [                    ], the Council on behalf of itself invited expressions of interest from appropriately qualified organisations for Services relating to the provisions of Operated Plant and equipment on hire for use by the Council supplied with an Operator on the basis set out in this Contract.

(B) The Provider has submitted proposals to the Council of Durham setting out how it will meet the Councils’ requirements through the provision of the Services.

(C) The Council of Durham has selected the Provider to provide the Services pursuant to this Contract.

Definitions and Interpretation

In this Contract, unless the context otherwise requires, the following terms shall have the meanings given to them below:

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| “Authorised Person” | Shall mean any person duly authorised by the Council to place Emergency Orders including (construction managers, maintenance managers, foremen and Contract / project supervisors); |
| “Authorised Representative” | Shall mean any person on a Site authorised to act on behalf of the Council and shall include the Site Supervisor or foreman in charge of a Site; |
| “Bank Holiday” | Shall mean any public or bank holiday generally recognised in England from time to time; |
| “Breakdown Time” | Shall mean the time required to repair Operated Plant during the hire period and therefore the use of such Operated Plant or equipment is temporarily halted; |
| “Change in Law” | The coming into effect or repeal (without re‑enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract; |
| “Clarifications” | Shall mean any clarifications placed by the Provider or the Council of Durham through the NEPO Portal during the tender process and included as Schedule 1 of the Contract; |
| “Confidential Information” | Any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data (within the meaning of the DPA); |
| “Contract” | Shall mean the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following Order of priority:1. this Contract (main body) executed by the Parties
2. Schedule 1 Clarifications
3. Schedule 2 - Fair Distribution Of Orders
4. Schedule 3 - Pricing Schedule
5. Schedule 4 - Specification
6. Schedule 5 - Form Of Tender
7. Schedule 6 – Tender
 |
| “Contract Commencement Date” | Shall mean the [ ]; |
| “Contract Period” | Shall mean the period of validity of the Contract as stated in the Clause 1.3 or as amended by the Council in accordance with Clause 34(28) the Public Contracts Regulations 2015; |
| “Council” | Includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists);  |
| “Direct Losses” | Shall mean all damages losses liabilities claims actions costs expenses (including the cost of legal or professional Services, legal costs on an indemnity basis) proceedings demands and charges whether arising under statute contact or at common law but excluding Indirect Losses; |
| “Disputed Amount” | Shall have the meaning given in Clause 23.5; |
| “DPA” | Shall mean The Data Protection Act 1998; |
| “EIR” | Shall mean The Environmental Information Regulations 2004;  |
| “Employee” | Shall mean an individual employed by the Provider in the performance of the Services; |
| “Expected Termination Date”  | Shall mean the expected termination date of an Order notified to the Provider by the Hire Desk as stated in Clause 4.4; |
| “Fair Wear and Tear” | Shall mean the general degree of deterioration judged to be reasonable taking into account such things as the length of hire; usage, age, overall condition, mechanics, electrics and body work; |
| “FOIA” | The Freedom of Information Act 2000; |
| “Force Majeure” | Shall mean any cause materially affecting the performance by a Party of its obligations under this Contract arising from any act beyond its reasonable control and affecting the other Party, including without limitation: acts of God, war, industrial action (subject to Clauses 7.11 and 14.1), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies; |
| “Guidance” | Shall mean any applicable guidance or directions with which the Provider is bound to comply; |
| “Hire Desk” | Shall mean any person duly authorised by the Council within the Strategic Fleet Hire Desk, to place Orders with the Provider for the hire of Operated Plant and shall be the primary contact for any query resolution; |
| “Hire Price” | Shall mean the hire price of the Operated Plant and Services as set out in Schedule 3, the Pricing Schedule, and calculated in accordance with Clause 15. Unless otherwise stated, any reference to Hire Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for; |
| “Hourly Hire Rate” | Shall mean the hourly hire rate indicated in the Pricing Schedule;  |
| “Indirect Losses” | Shall mean the loss of profits, loss of use loss of production loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature; |
| “Invitation to Tender” | The Council of Durham’s invitation to tender document for the Contract entitled Durham County Council Tender for the Supply of Operated Hired Operated Plant, ITT Schedule 1 Instructions to Bidders and Evaluation Methodology ITT Schedule 1, ITT Schedule 2 Contract and ITT Schedule 3 – Tender; |
| “Law” | Shall have the same meaning as Legislation; |
| “Legislation” | Shall mean any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right (and where relevant) within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Provider is bound to comply; |
| “Liabilities” | Shall mean all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, Orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought; |
| “Method Statement” | Shall mean a document that details the way a work task or process is to be completed. The method statement should outline the hazards involved and include a step by step guide on how to do the job safely. The method statement must also detail which control measures have been introduced to ensure the safety of anyone who is affected by the task or process; |
| “Minimum Hire Period” | Shall mean the minimum hire period set out in the Schedule 3, the Pricing Schedule; |
| “NEPO Portal” | Shall mean a Pro contract system which is an e-Tendering system used for the tendering process; |
| “Non-Conformance” | Shall mean instances of non-conformance as set out in Clause 21.5 of the Contract; |
| “Operator” | Shall mean persons employed by the Provider to operate the Operated Plant, and shall include driver and/or attendant; |
| “Operator’s Licence” | Shall mean the Operator’s licence held by the Provider supplying the Operated Plant unless covered by exemption as defined by the Driver & Vehicle Standards Agency (DVSA) – Driver Services & Information - Being A Goods Vehicle Operator; |
| “Order” | Shall mean an Order for the hire of Operated Plant made by the Hire Desk in accordance with the provisions of Clause 4.4; |
| “Order Commencement Date” | Shall mean the Order commencement date and required delivery time provided by the Hire Desk on the placing of an Order with the Provider in accordance with the provisions of Clause 4.4; |
| “Order Information” | Shall mean the information set out in Clause 4; |
| “Order Period” | Shall mean the period of an Order that the Operated Plant is on hire calculated in accordance with Clause 6; |
| “Order Termination Date” | Shall mean the termination date of an Order notified to the Provider by the Hire Desk as stated in Clause 13; |
| “Party” | Shall mean a Party to this Contract and “Parties” shall be construed accordingly; |
| “Prescribed Rate”  | Shall mean the rate payable by the Council on the late payment of any undisputed sums of money by way of a Valid Invoice in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 |
| “Prohibited Act “ | Shall mean:(a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward: (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other Contract with the Authority; or (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other Contract with the Authority;(b) entering into this Contract or any other Contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant Contract is entered into particulars of any such commission and of the terms and conditions of any such Contract for the payment thereof have been disclosed in writing to the Authority; or(c) committing any offence: (i) under the Bribery Act 2010; (ii) under Legislation creating offences in respect of fraudulent acts; or (iii) at common law in respect of fraudulent acts in relation to this Contract or any other Contract with the Authority; (d) defrauding or attempting to defraud or conspiring to defraud the Authority; |
| “Provider” | The Provider and where applicable this shall include the Provider's Employees, Sub-Providers, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members; |
| “ Provider’s Representative” | Shall mean a person attending a Site on behalf of the Provider; |
| “Purchase Order Number” | Shall mean an official purchase order reference number generated by the Council issued to the Provider by the Hire Desk upon every Order in accordance with the provisions of Clause 4.4; |
| “Replacement Provider” | Shall mean any company, organisational person who replaces the Provider following termination or expiry of all or part of this Contract; |
| “Risk Assessment” | Shall mean a careful examination of what, in the workplace, could cause harm to people, so that an assessment may be made whether enough precautions have been taken or if more should be done to prevent harm; |
| “Schedules” | Shall mean schedules appended to the Contract; |
| “Services” | Shall mean the supply any Operated Plant on hire by the Provider in accordance with the Specification and the terms and conditions of this Contract together with all other equipment required and any associated goods and Services provided by the Provider in relation to that hire; |
| “Site” | Shall mean the Site or location specified in the Order Information;  |
| “Specification” | The specification at Schedule 4 of the Contract setting out the Council's requirements in relation to the Operated Plant and Services; |
| “Site Supervisor”  | Shall mean the person in charge on a Site authorised to act on behalf of the Council; |
| “Standard National Licence” | Shall mean the minimum Operators Licence acceptable to the Council unless covered by exemption.  |
| “Sub-Contract” | any contract or agreement, or proposed contract or agreement between the Provider and any third party whereby that third party agrees to provide to the Provider the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services; |
| “Sub-Contractor” | any other person engaged by the Provider from time to time as may be permitted by this Agreement to procure the provision of the Works and/or the Services (or any of them). References to Sub-Contractors means Sub-Contractors (of any tier) of the Provider; |
| Suspend/suspension | As set out in Schedule 2 – Fair Distribution of Orders |
| “Tender”“Tender Price”  | Shall mean the Provider’s completed tender for the Services in response to the Council’s Invitation to Tender entitled Durham County Council Tender for the Supply of Operated Hired Operated Plant, ITT Schedule 1 Instructions to Bidders and Evaluation Methodology, ITT Schedule 2 - Contract and ITT Schedule 3 - Tender and Selection Questionnaire;Shall mean the completed Pricing Schedule at Schedule 3; |
| “The System” | The Councils electronic plant hire system |
| “Valid Invoice” | Shall mean an invoice providing a unique identification number (Order Number), full supplier name and address details, description of goods and services, date of supply, invoice date, amount charged and all relevant vat details required; |
| “Week” | Shall mean seven consecutive days; |
| “Working Hours” | Shall mean the normal working hours of the Council’s manual employees at the time of hire; |
| “Working Day” | Any day other than a Saturday or Sunday or a public or Bank Holiday in England; |
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Interpretation

In this Contract, except where the context otherwise requires:

(a) the masculine includes the feminine and vice versa;

(b) the singular includes the plural and vice versa;

(c) a reference to any Clause, sub-Clause, paragraph, Schedule, recital or Annex is, except where expressly stated to the contrary, a reference to such Clause, sub-Clause, paragraph, Schedule, recital or Annex of and to this Contract;

(d) save where stated to the contrary, any reference to this Contract or to any other document shall include any permitted variation, amendment

(e) any reference to any enactment, Order, regulation or other similar instrument shall be construed as a reference to the enactment, Order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;

(f) references to any documents being “in the agreed form” means such documents have been initialled by or on behalf of each of the Parties for the purposes of identification;

(g) a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;

(h) headings are for convenience of reference only;

(i) words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words;

(j) any obligation on a Party to do any act matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and

(k) subject to any express provisions to the contrary, the obligations of either Party are to be performed at that Party’s own cost and expense.

Schedules

The Schedules to this Contract form part of this Contract.

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| Appointment of Provider  |
| The Council hereby appoints the Provider for the provision of the Services for the Contract Period.The Provider shall perform its obligations under this Contract in accordance with the terms and conditions of the Contract. |
| This Contract shall commence on the Contract Commencement Date and (subject to Clause 1.4 below) shall be valid for an initial period of seven (7) years. |

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| Operated Plant  |
| The Provider agrees that the Operated Plant supplied by the Provider to the Council under this Contract shall be in accordance with the terms and conditions of this Contract and shall comply in all respects with the Specification.  |
| For the avoidance of doubt Operated Plant supplied to Council which does not comply with the Specification shall not be accepted on hire by the Council.  |
| The Provider must ensure that all Operated Plant supplied remains in safe working Order and fully compliant with all applicable Legislation and Guidance in force throughout the Order Period and provide appropriate documentation upon request |
| Where bio-degradable oils and lubricants are required due to the environmental nature of the work, e.g. working in or adjacent to drains, water courses, rivers, dams and fords, the Provider will be responsible for ensuring compliance with all environmental legislation and will meet the costs of replacing and providing such oils and lubricants as required in Order to ensure that the Operated Plant meets requirements for operating in such environments. |
| 2.5 Fuel in all cases will be supplied by the Provider. Rates supplied must be fully inclusive of fuel. The Council will not provide fuel in any circumstances. |
| 2.6 The Council acknowledges that the Operated Plant remains the property of the Provider or if applicable the Sub-Contractor at all times. |

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| Provider warranties  |
| The Provider warrants to the Council that the Services shall be supplied in a proper, skilful and workman like manner and Operated Plant shall be:  |
| Free from defects in design, material and workmanship; and; |
| Without fault and safe for its proper and ordinary intended use, and |
| Comply with all applicable current Legislation from time to time, in force; and The Provider warrants that it holds a relevant, valid Operator’s Licence. The Council deems Standard National Licence as a minimum acceptable unless covered by exemption.  |
| The Provider warrants that all claims it has made about itself, its personnel and any Sub-Contractors in the Tender which has resulted in its appointment under this Contract are materially true and correct.  |
| The Provider warrants and represents that on entering into this Contract it has not committed any Prohibited Act. |
| Nothing in this Contract in itself excludes or otherwise limits any warranties implied by Law.  |

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| Orders  |
| The Council may throughout the Contract Period issue Orders for Operated Plant to the Provider in accordance with this Clause 4 and Schedule 2 (Fair Distribution of Orders). |
| The Provider shall fulfil all Orders in accordance with this Contract and the specific requirements notified to the Provider by the Hire Desk. |
| For the avoidance of doubt, the Council shall be under no obligation to issue any Orders to the Provider or to hire any Operated Plant from the Provider, or to issue a minimum number of Orders to the Provider, or to seek Operated Plant from the Provider on an exclusive basis. |
| Orders must be placed with the Provider by the Hire Desk and must include the following Order Information for each category of Operated Plant required: |
| Description of the Operated Plant; |
| Purchase Order Number; |
| Delivery time and date; |
| Specified delivery location; |
| Expected Termination Date; |
| .Orders shall be placed using the Council’s Purchase Order Number. No Operated Plant shall be provided unless the Provider shall first have received a Purchase Order Number. The Purchase Order Number must be stated on the invoices submitted by the Provider and no payments will be made for any Operated Plant not covered by a Purchase Order Number. |
| No Operated Plant shall be provided by the Provider unless the Provider shall first have received the information in Clause 4.4 and 4.5 from the Hire Desk, except under emergency circumstances stipulated in Clause 4.12. The Provider shall not accept orders placed within Working Hours except via the Hire Desk. For the avoidance of doubt orders placed by Council staff on site shall not be accepted. Orders accepted by the Provider other than via the Hire Desk or under the emergency circumstances in Clause 4.12 will be considered as unauthorised hires at the Provider’s expense and the Council shall not be liable for payment of any costs associated with the unauthorised hire.  |
| On receipt of an Order the Provider shall comply with the procedures set out in Schedule 2, Fair Distribution of Orders.  |
| The Council reserves the right to alter the Expected Termination Date at its own discretion. |
| The Hire Desk will notify the Provider of the Order Termination Date in accordance with Clause 13.  |
| The Provider shall accept Orders between the Hire Desk hours of 8.00a.m and 4:30p.m (Monday to Thursday) and 8.00a.m and 4:00p.m (Friday) and Orders outside of these hours shall be considered emergency circumstances.  |
| Orders accepted under emergency circumstances would be placed by an Authorised Person from the Council. |
| Such Orders accepted under emergency circumstances can be accepted by the Provider without a Purchase Order Number, where placed in exceptional circumstances by an Authorised Person as stated in Clause 4.11. Under such circumstances, the Council will provide a Purchase Order Number on the next available working day.Providers who wish to be considered for the allocation of Emergency Orders, providing Services outside of the Council’s Contract Working Hours should ensure that an out of hours contact number is available to the Council for appropriate circulation. Orders will be allocated to the nearest authorised Provider able to supply the required Operated Plant within the zone the emergency occurred. |

4.15 In certain circumstances the Council may require the Provider to tow or relocate equipment belonging to the Council or a third party between Sites. The Provider must ensure that the terms of its relevant insurance policies are sufficient to cover such activity. The Provider shall also be responsible for secure loading, unloading, hitching and unhitching of the plant and equipment.

4.16 Where Operated Plant is required to be transported from one site to another as part of a hire order (multiple locations), the Council shall be responsible for costs of transportation. Transport costs will only be considered where plant requires transportation via a low loader or similar transportation method. Any such costs will be negotiated at the time of hire and will be confirmed by automated e-mail.

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| Sub-Contracting  |
| Nothing in this Contract shall prohibit the Provider from providing or procuring the provision of Operated Plant from a Sub-Contractor.  |
| The Provider shall: |
| 5.2.1 Use reasonable skill, care and diligence in selecting reputable firms to engage in any Sub-Contracting arrangement, |
| 5.2.2 Perform its obligations under and observe all terms of any Sub-Contract with a Sub-Contractor, and |
| 5.2.3 Ensure that contracts between the Provider and any Sub-Contractor shall contain terms and conditions and obligations as may be necessary to enable the Provider to meet all its obligations to the Council under this Contract. |
| The Sub-Contracting by the Provider of the provision of any Operated Plant shall not relieve the Provider of any liability under this Contract for breach of any obligations arising under this Contract or for the actions, negligence and/or defaults by any Sub-Provider. Any act or negligent omission of any Sub-Contractor shall be regarded as an act or omission of the Provider. Operated Plant provided by any such Sub-Contractors shall be regarded by the Council as if it were supplied by (and property of) the Provider and as such are responsible under the terms of Clause 21.6.  |
| The Council shall accept no liability to meet the charges, claims or other demands of any Sub-Contractor in connection with this Contract. The Provider shall indemnify the Council in full on written demand for any claims, actions or proceedings made or threatened by such Sub-Contractors in connection with this Contract.  |
| 5.5 Where the Authority considers whether there are grounds for the exclusion of a Sub-Provider under Regulation 57 of the Public Contracts Regulations 2015, then: if the Authority finds there are mandatory grounds for exclusion, the Provider shall replace or shall not appoint the Sub-Contractor; if the Authority finds there are discretionary grounds for exclusion, the Authority may require the Provider to replace or not to appoint the Sub-Contractor and the Provider shall comply with such a requirement. 5.6 The Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own. 5.7 Where the Council has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Council, be sent by the Provider to the Council as soon as reasonably practicable.5.8 Subject to Clause 5.9, the Council may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:a) any Contracting Authority; or b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Council; or c) any private sector body which substantially performs the functions of the Council; 5.9 Provided that any such assignment, novation or other disposal shall not increase the burden of the Provider’s obligations under the Contract. 5.10 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to Clause 5.9 affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Council.5.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 5.9 to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this Clause both such bodies being referred to as "the Transferee"): the rights of termination of the Council shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; andthe Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Provider.5.12 The Council may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider’s obligations under the Contract. In such circumstances the Council shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider’s obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.  |
|  5.13 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract. |

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| Order Period |
| The Order Period shall commence on whichever is the latest of the following dates, the Order Commencement Date or the date the Operated Plant is accepted by the Council in accordance with Clause 8.  |
| The Order Period shall end on the Order Termination Date unless extended by the Hire Desk.  |

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| Delivery |
| The Provider shall deliver the Operated Plant to the location specified in the Order Information at the date and time specified in the Order Information. |
| In exceptional circumstances an alternative arrangements may be made by agreement between the Provider and the Hire Desk. |
| The Provider shall keep the Council informed in a proper and timely manner of any event or circumstance causing it to be unable to deliver the Operated Plant in a proper and timely manner. For the avoidance of doubt, keeping the Council informed under the provisions of this Clause 7.3 shall not in itself relieve the Provider from liability for any breach of this Contract. |
| Time is of the essence in respect of each Order.  |
| Where appropriate, all commercial vehicles and any other vehicles used by or on behalf of the Provider entering onto any Site shall be fitted with audible reversing alarms, beacons and appropriate warning lights. Drivers of all vehicles whilst on Council's Sites must comply with Site rules, speed limits and shall have regard for the safety of all persons. Particular care and attention should be made with regard to school premises, those establishments catering for vulnerable adults and highly populated areas. e.g. such as town centres. |
| The Provider shall be solely responsible for the unloading and loading of any Operated Plant supplied in accordance with an Order at a Site without assistance from any Council employees. The Provider must ensure that a competent reversing assistant is available to observe and assist in all reversing manoeuvres whilst unloading and loading. |
| The Council shall be under no obligation to accept or pay any costs in respect of any Operated Plant delivered to a Site that does not materially comply with the description of the Operated Plant in the Order Information. |
| The Council shall be under no obligation to accept any Operated Plant delivered earlier than the time and date specified in the Order Information unless agreed by both Parties. |
| If the Council or the Site where delivery is required is affected by circumstance of Force Majeure, the Council shall be entitled to suspend the date or dates for delivery of any or all of the Operated Plant until the circumstances of the Force Majeure have sufficiently eased to reasonably allow delivery. The suspension shall not in itself give rise to any claim by the Provider against the Council nor entitle the Provider to terminate the Contact or any Order, nor give the Council any rights against the Provider for breach of Contract.  |
| In the event of industrial action by the Provider's employees, it remains the Provider's responsibility to meet the requirements of this Contract. The Provider must inform the Council immediately of impending or actual disputes that may affect the Provider's ability to supply the Operated Plant. |
| If the Provider at any time becomes aware of any actual or attempted act or omission of the Council, which (on a reasonable view) unjustifiably prevents or hinders (or is reasonably likely to do so) the Provider from properly supplying relevant Operated Plant in connection with a particular Order, the Provider shall promptly inform the Council in the manner reasonably required by the Council from time to time. The obligations of the Provider in relation to that Order shall be suspended until the relevant problem has been properly rectified by the Council.  |
| Without prejudice to any of the rights and remedies available to the Council whether or not contained elsewhere in the Contract, if the Supplier shall be in breach of any of the conditions of Clause 7 or any other provision of the Contract the Council shall have available in addition to any statutory rights and remedies the following options exercisable in its absolute discretion individually or in any combination: |
| If the Operated Plant is not delivered within the times specified in the Order, the Council shall be entitled to recover from the Provider any additional expenditure incurred by the Council resulting from the failure to deliver the Operated Plant within the specified timescales, which has resulted in any delay to works. |
| Any other Direct Losses and Indirect Losses incurred by the Council arising from that failure. |

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| Acceptance and Rejection of Operated Plant |
| Only Operated Plant deemed suitable and fit for purpose will be accepted onto the Site. Authorised Representatives are under no obligation to accept any Operated Plant onto Site, which is not in the reasonable view of the Council, in accordance with this Contract. |
| Only Operators who can produce their relevant recognised training certificate, e.g. CITB, CPCS, NPORS or certified industry equivalent will be accepted on Site. |
| Without prejudice to Clause 8.1 and 8.2 the Council reserves the right once the Operated Plant and or the Operator have been accepted on Site to reject the Operated Plant (or any proportion thereof) and or Operator if at the absolute discretion of the Authorised Representative the Operated Plant (or any proportion thereof) and or Operator is considered by the Authorised Representative to be unsafe or unsuitable in any way. |
| As soon as the Council informs the Provider that any Operated Plant and or Operator is rejected, the Provider must remove the rejected Operated Plant and or Operator immediately from the Site at its own cost. |
| If any rejected Operated Plant and or Operator is not so removed, the Council may at their discretion cause the Operated Plant to be returned to the Provider and the Provider shall pay all expenses incurred by the Council in returning the Operated Plant to the Provider.  |
|  Without prejudice to any of the rights and remedies available to the Council whether or not contained elsewhere in the Contract, if the Provider shall be in Breach of any of the conditions of Clause 8 or any other provision of the Contract the Council shall have available in addition to any statutory rights and remedies the following options exercisable in its absolute discretion individually or in any combination: |
| No payment will be made for Operated Plant that is not accepted by the Authorised Representative. |
| In such event any costs, which have been incurred by the Council as a result of the Provider failing to ensure that the Operated Plant was fit for purpose and in accordance with the conditions of this Contract, shall be deemed to be a debt due from the Provider to the Council.  |

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| The Operator |
| The Provider shall ensure and demonstrate to the Council if required that every Operator employed by him in the execution of this Contract is adequately trained, licenced (by licence category and CPC, unless covered by CPC exemption), insured and qualified in accordance with statutory and safety legislation current at the time of hire, including but not limited to the following accrediting bodies:Construction Industry Training Board (CITB);* Construction Plant Competence Scheme (CPCS)
* Construction Skills Certificate Scheme (CSCS)

Lantra Awards;The Independent Training Standards Scheme and Register (ITSSAR);Association of Industrial Truck Trainers;National Operated Plant Operators Registration Scheme (NPORS)Road Transport Industry Training Board (RTITB) |
| The Provider will ensure that the Operator has proof of training and any other required legal documentation which must be available for inspection to the Council upon a reasonable request at point throughout the duration of the Contract. |
| The Provider will submit to the Authorised Representative on Site, as and when required, a Risk Assessment, which the Provider must carry out at every Site prior to commencing Services on the Site and where appropriate, a Method Statement. The Provider is responsible for the provision of all personal protective equipment required by the Operator as specified in risk assessments. Operators will not be allowed to work on site without wearing the appropriate personal protective equipment. |
| The Operator must report to the Authorised Representative on Site and at the start of each hire period, or a change in Operator throughout the hire period to receive a Site Induction and receive a Site Specific Risk Assessment.  |
| When an Operator is supplied by the Provider to operate the Operated Plant they shall remain the employee of the Provider for all purposes but shall work under the direction of the Council’s Authorised Representative on the Site. In the event of such Operator refusing to carry out the instructions of the Authorised Representative the Operator shall be deemed to be absent from the Site unless and until the Provider satisfies the Council that the instructions given by the Authorised Representative were unreasonable and likely to endanger the safety of persons, property or animals. If not resolved in a timely manner, failure to carry out a reasonable instruction shall be deemed an instance of Non-Conformance under Clause 21.5. If an alternate Operator is not supplied, the Provider shall be off-hired and a new supplier sought. The Provider shall be responsible for all costs incurred by the Council arising from any delays. |
| During such time as the Operator is not actually operating the Operated Plant or carrying out essential maintenance work to the Operated Plant, he shall carry out general labouring duties which the Council, acting reasonably, requires the Operator to carry out at the Site during the hire period. Operators must have appropriate up-to-date training e.g. manual handling. |
| 9.9 The Provider and Operator are responsible for informing the Council and the Authorised Representative of any restrictions, including, lack of training or experience, disability or injury which may cause a risk to the Operator or others in the event of the Operator carrying out any aspect of the general labouring duties required. |
| 9.10 In the event of the Provider being unable to comply with any Order to supply any Operated Plant he shall immediately inform the Council of his inability to do so. |
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| Inspection and Maintenance  |
| The Provider shall carry out regular inspections and testing at its own expense of all Operated Plant to ensure that it is in efficient working order and shall make all necessary repairs without avoidable delay.  |
| The Council shall upon reasonable prior notice and at reasonable times allow the Provider, its authorised agents, or its insurers access to the Operated Plant for the purposes of inspection and to carry out any works of maintenance, repair or replacement. |
| The Provider shall keep records of all inspections, repairs, servicing and maintenance of Operated Plant and when requested by the Council shall allow the Council access to such records and shall provide the Council with such additional information as the Council may reasonably require to establish to its satisfaction the adequacy of such inspections, servicing, repairs and maintenance in accordance with manufacturers recommendations. |
| The Provider shall at all reasonable times allow the Council’s officers to inspect any Operated Plant on hire to the Council. |
| If at any time during the hire period, the Operated Plant is in the opinion of the Provider in need of repair he may stop the further use thereof until such repair has been executed on Site. On such occasions where the Operated Plant is not in use, the time taken to execute such repairs shall be recorded as Breakdown Time.  |
| The Council reserves the right to carry out safety inspections at its discretion which shall be carried out by the Council’s Fleet Inspector or his representative and the Provider shall provide full cooperation. Safety inspections may occur on site or Providers will be asked to attend and inspection at Council premises. Any Operated Plant deemed to be unsuitable or unsafe for use on the Site or in need of service or repair by the inspector or his representative will be issued with a prohibition or an advisory notice. Depending on the severity of the defects identified and if instructed to do so in the notice, the Provider will remove the Operated Plant from site. Prohibition and advisory notices will be recorded in The System in accordance with Clause 21. |
| No payment will be made for any Operated Plant that is not replaced or repaired within the agreed timescale of the prohibition notice being issued. Failure by the Provider to repair or replace the Operated Plant within the timescale agreed will result in the Operated Plant being off hired and no payment shall be made for that day. Any additional costs incurred by the Council as a result of the off hire shall be deemed a debt due from the Provider. |
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| The Provider shall meet the cost of lubricating oils, greases and ropes and the cost of repairs (including all necessary replacement parts), fair wear and tear, any inherent fault in the Operated Plant (whether apparent on inspection or not), malicious damage, negligence on the part of the Operator (or any other person for whose negligence the Provider is responsible), or any failure on the part of the Provider to comply with his obligations under the Contract.  |
| The Provider must ensure that all operated plant maintenance and service inspections do not expire throughout the hire period. |

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| Defective Operated Plant, Repairs and Replacement  |
| **Defective Operated Plant** |
| The Council shall notify the Provider promptly if in the reasonable opinion of the Council the Operated Plant is unsafe, defective, damaged or in need of service or repair. |
| If at any time the Operated Plant is in the opinion of the Authorised Representative in need of repair/maintenance he may stop the further use thereof until such repair has been executed on Site. On such occasions where the Operated Plant is not in use the time taken to execute such repairs shall be recorded as Breakdown Time. Any repairs must be carried out without delay and with minimum disruption to the Council operations, within a reasonable timeframe to the satisfaction of the Authorised Representative. |
| **Repairs** |
| The Provider shall carry out all necessary repairs to the Operated Plant without delay and in any event within 4 hours from receipt by the Provider of a notification under Clause 11.1 if such notification is received between the hours of 7.30 am and 3.00pm on any Working Day.  |
| All repairs must be to the satisfaction of the Council. |
| In the case of failure to carry out the necessary repairs within the time period set out in Clause 11.3 the Provider shall provide a suitable replacement for the Operated Plant by no later than 7:30 a.m the following Working Day. |
| The Provider shall be responsible for all costs incurred by the Provider in repairing the Operated Plant including but not limited to all transport costs. |
| No payment will be made for any day where Operated Plant is not repaired in accordance with the provisions of Clause 11.3. Failure by the Provider to repair the Operated Plant within this time period and to the satisfaction of the Council will result in the Order being terminated or suspended until the Operated Plant is repaired or suitable replacement Operated Plant has been provided by the Provider at the Site. No payment shall be made for the Operated Plant during the suspension of the Order. Any additional costs incurred by the Council as a result of the off hire shall be deemed a debt due from the Provider. |
| If the Provider fails to replace or repair the Operated Plant in accordance with Clauses 11.3, 11.12 and 11.13 the Provider shall be liable to pay to the Council any Direct Losses and Indirect Losses incurred by the Council arising from that failure. |
| The Council shall not repair or attempt to repair the Operated Plant unless authorised by the Provider. All such work will be undertaken by appropriately trained and qualified Council personnel. The Provider shall be responsible for all costs incurred by the Council in repairing the Operated Plant.  |
| Punctures, damaged tyres and related equipment are the responsibility of the Provider and will be repaired at no cost to the Council or its agents. |
| Without prejudice to any of the rights and remedies available to the Council whether or not contained elsewhere in the Contract, if the Provider shall be in breach of any of the conditions of this Clause 11 or any other provision of the Contract the Council shall have available in addition to any statutory rights and remedies the following options exercisable in its absolute discretion individually or in any combination: |
| Failure to repair on the Site the Provider may by agreement with the Council remove such Operated Plant to the Provider’s depot for repair but before removing the Operated Plant from the Site, the Provider shall replace the Operated Plant and the Provider shall be responsible for all transport and handling charges involved in the transaction. |
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| **Replacement** |
| Where it is agreed between the Parties and that it is not practicable to repair the Operated Plant, as per Clause 11.5 and upon receipt of a notification under Clause 11.1, the Provider shall provide suitable alternative Operated Plant as replacement Operated Plant at the Site within the following timescales: |
| within four hours of receipt by the Provider of such notification if such notification is received between the hours of 7.30 am and 12.00 pm on any Working Day |
| by 7:30 am the following Working Day if such notification is received by the Provider after 12.00 pm on any Working Day  |
| within four hours of receipt by the Provider of such notification if such notification is received before 10.00am on a Saturday |
| by 7:30 am the following Working Day if such notification is received by the Provider after 10.00 am on a Saturday.  |
| In exceptional circumstances if it is not considered practical to comply with the provisions of Clause 11.12, the Parties may agree an alternative time for the provision of the replacement Operated Plant.In the event the Provider cannot repair the Operated Plant and is unable to provide a satisfactory replacement, he shall notify the Hire Desk within the timescales set out in Clause 11.12. |
| The Provider shall be responsible for all costs incurred in providing the replacement Operated Plant.  |
| No higher rate will be paid by the Council for the replacement Operated Plant in the circumstances that the replacement Operated Plant provided by the Provider has a Hire Price in excess of the Hire Price of the Operated Plant specified in the Order. |
| No payment will be made for replacement Operated Plant on any day it is not provided within the timescales set out in Clause 11.12. Failure by the Provider to replace the Operated Plant in accordance with Clause 11.2 will result in the Order being terminated or suspended until suitable replacement Operated Plant has been provided by the Provider. No payment shall be made for the Operated Plant during the suspension of the Order. Any additional costs incurred by the Council as a result of the off hire shall be deemed a debt due from the Provider. |
| Safekeeping of Operated Plant

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| The Provider shall be totally responsible for all damage to or loss of the Operated Plant and in particular the Council shall not be held responsible for any damage caused to the Operated Plant or for the driving or taking away of Operated Plant or any part thereof by any person or persons who are not agents or servants of the Council and it is the responsibility of the Provider to Insure against such risks.

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| The Council shall notify the Provider as soon as is reasonably practicable if any Operated Plant is stolen or has been criminally damaged. |
| 12.2.1 Terminate the relevant Order with immediate effect. |
| 12.2.2 On request provide reasonable assistance to enable the Contactor to establish the circumstances relating to the event. |

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| Termination of Orders and Collection |
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| The Order Period shall terminate on the termination date notified to the Provider by the Hire Desk. |
| Unless otherwise agreed between the Parties, the Provider shall remove the Operated Plant from the Site on the Order Termination Date. |
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| Suspensions |
| The Council may at its sole discretion temporarily suspend an Order. Such suspensions will apply during seasonal shut downs, industrial action by the Council, adverse weather conditions, holiday periods and any other time deemed necessary by the Council. |
| The Hire Desk shall notify the Provider of the commencement date of the suspension of an Order and the date the period of suspension will terminate. |
| Operated Plant, which by agreement of both Parties remains on Site throughout the suspension period, shall remain the sole responsibility of the Provider. |
| No payment shall be made for an Order during periods of suspension notified in accordance with Clause 14.2. |

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| Hire Rate |
| The Provider’s minimum daily hire period shall not exceed 7 hours 30 Monday to Thursday and 7 hours on Friday.  |
| No claim for payment will be accepted where an Order is suspended in accordance with Clauses 11 and 14.  |
| Payment for hire of Operated Plant hired at an hourly rate shall be made by the Council to the Provider on the following basis: -  |
| During Working Hours where the Operator is present and fully occupied, and the Operated Plant is in use shall be paid for at Standard Working Time rate. |
| During Working hours where the Operated Plant is not in use due to breakdowns the Provider will receive no payment.Hire rate should include travelling time |
| It is the Providers responsibility to supply all fuel on all occasions for all items of operated plant and equipment, therefore the Provider must make provision for fuelled rates within the pricing schedule. |
| Work outside of Contract normal working hours shall be charged at the Operators Premium Time rate as stated in the Pricing Schedule - Ancillary Rates and Charges – Operated. Operators Premium Time rate will commence from 4pm.  |
| Time Sheets |
| The Provider shall submit for authorisation at the end of each Working Week or hire period if less than one week, to the Authorised Representative in charge of the work, a time sheet in duplicate showing full information relating to the work done that week, which will require the Authorised Representative’s signature. One copy of the time sheet shall be retained by the Authorised Representative and the other copy by the Provider.  |
| The Operator’s working time, Breakdown and Premium Time must be recorded on the Operators time sheet. |
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| Soft ground / Underground/Overhead Services  |
| If the Site on which the Operated Plant is required is soft or unsuitable to operate on then the Council shall take all reasonable precautions necessary for the Operated Plant by way of the provision of foundations, to the reasonable satisfaction of the Provider/Operator. |
| Should the Provider have any concerns to the condition of the Sites, prior to or during work being undertaken, such concerns must be reported to the Authorised Representative on Site in Order to allow a full assessment to be undertaken by the Council and the correct measures to be undertaken by the Council, in conjunction with Clause 17.1. |
| Before commencing upon any excavation work under the Contract the Operator of the Operated Plant must ensure that he receives from the Authorised Representative instructions as to the work to be performed and details of any underground and overground Services likely to be encountered. The information will be given verbally and written on the Council’s instruction form, which is to be signed by the Operator and the Authorised Representative to confirm that the instructions are clearly understood. One copy of the form will be given to the Operator for submission to the Provider.The Council will provide barriers for use near excavations to prevent collapse of the excavationThe Council will identify and communicate with the operator, a safety zone whilst working near but not underneath overhead lines. The Council will provide the operator with information regarding the overhead line e.g. isolated. |
| Prohibition of Assignment of Operated Plant |
| The Council shall not sell, mortgage, charge or pledge the Operated Plant nor shall they sub-let or lend the Operated Plant or any part thereof to any third Party without first receiving the written permission of the Provider and shall indemnify the Provider against all losses, damage, costs, charges and expenses that may be occasioned by any failure to observe and perform this condition, except in the case of Government requisition or in circumstances in which the Council are legally entitled so to do. |
| Consequential Loss |
| The Council shall not be liable for any claim in respect of consequential loss to the Provider arising from the loss or theft of Operated Plant whilst on hire to the Council. |
| Tractors |
| Providers tendering for the supply of hire of tractors and associated equipment should note that the Pricing Schedule provides for the hire of operated tractors which can only be used solely on site and agricultural and forestry work and alternately those that can be legally used on the public highway with load carrying trailers. Providers offering tractors for operation on the public highway shall be solely responsible for ensuring that both the equipment offered and the driver comply with all statutes and regulations relevant to the operation of tractors on the highway specifically but not restricted to Operator Licence Regulations. |
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| Contract Management and Performance |
| The Provider is required to collaborate with the Council over the Contract Period to achieve continuous improvement in the quality and delivery of the Services in accordance with the Council’s obligations under Part I of the Local Government Act 1999. |
| The Provider shall attend all meetings requested by the Council. |
| The Provider shall attend such ad hoc performance review meetings with the Council as the Council shall request. |
| Operated Plant supplied under the terms and conditions of this Contract shall: |
| Be of the best quality, material, design and workmanship available; |
| Be without fault and fit for the purpose required by the Council; |
| Conform in all respects with the Order and specification supplied or advised by the Council to the Provider and |
| Comply as a minimum requirement with all appropriate EC standards, British Standards Specification and Code of Practice issued by the British Standards Institution or particular industry standards or any equivalent standards in force at the time of delivery and throughout the duration of the hire. |
| The Provider’s performance during the course of this Contract will be monitored and recorded by the Council on the following basis, (and as further detailed in Schedule 2):  |
| Quality of the equipment supplied; |
| Frequency of breakdowns and time taken to carry out repairs; |
| Ability to supply in accordance with the terms and conditions; |
| Ability to supply the correct Operated Plant to the correct site at the correct time as set out in the Order; |
| Capacity and ability of the Operator Health & Safety compliance.Financial compliance which shall include the submission of accurate invoices in accordance with Clause 23. |
| Where there is a failure or breach of any of the Non-Conformance listed in Clause 21.5, the Authorised Representative will formally record the instances of Non-Conformance and notify the Hire Desk who will record the information against the relevant hire Order and Provider within The System. This will form an auditable record within The System and may be used in the future to make a decision as to whether to temporarily exclude a Provider from receiving Orders. Performance issues shall be managed as detailed in Schedule 2 – Fair Distribution of Orders, paragraph 3. |
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| Without prejudice to any of the rights and remedies available to the Council whether or not contained elsewhere in the Contract, if the Supplier shall be in breach of any of the conditions of Clause 21 or any other provision of the Contract the Council shall have available in addition to any statutory rights and remedies the following options exercisable in its absolute discretion individually or in any combination: |
| In case of failure by the Provider to satisfy the Order, the Council shall have power to purchase other Operated Plant or Services in lieu thereof.  |
| Any excess of cost incurred by the Council under the foregoing provisions of this Clause 21 over the Hire Price, together with all charges and expenses attending the hire of such other Operated Plant or Services, shall be deemed to be a debt due from the Provider to the Council. The Council shall have power to deduct the amount of any such debt from any sum or sums due or to accrue due to the Provider. |

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| Contract Price Variations  |
| Variations to the Contract Price shall be solely in accordance with six (6) monthly hire rate refreshes. |
| No hire rate refreshes will be permitted for a period of 6 months from the Contract Commencement Date. |
| Invoicing and Payment  |
| In consideration of the Provider’s due and proper performance of its obligations under the Contract, the Provider may charge the Council in accordance with the Pricing Schedule, as per Clause 15 and this Clause 23 for the Services provided by the Provider during the Hire Period. |
| No later than 14 days after the Order Termination Date, the Provider shall submit a Valid Invoice relating to the Operated Plant supplied and the Services performed to:Durham CouncilFinancial SupportSt John's RoadMeadowfield Industrial EstateMeadowfieldDURHAMDH7 8XQ |
| Where the Order Period is greater than 1 month, then Valid Invoices should be submitted to the address stated in Clause 23.2 on a weekly basis for the duration of the Order period, for each week of Hire completed. |
| Upon receipt of the Valid Invoice, if the Council agrees with the total Valid Invoice amount the Council shall pay the total invoice amount, by BACS (Bank Automated Clearing System) within 30 days of the receipt of a Valid Invoice. |
| If the Council does not agree with the total Valid Invoice amount, the Provider and Council shall work together to resolve any disputes, in accordance with the timescale set out in Clause 23.8 (Disputed Amounts).  |
| The Council may withhold payment of any Disputed Amount pending agreement or determination of the Provider’s entitlement in relation to the Disputed Amount in accordance Clause 23.8 (Disputed Amounts) Invoices must clearly show the separate labour and material costs, to enable the Council to carry out its obligations with regards to the Construction Industry Scheme. Providers must provide their unique Tax Reference Number and Company Registration Number to enable their tax status to be verified with HMRC. A written statement will be provided to Sub-Contractors from whom a deduction has been made within 14 days of the end of each tax month. |
| Disputed Amounts |
| Within five (5) Working days of the acknowledgement by the Council of the relevant disputed invoice, the Council shall notify the Provider in writing of its reasons for disputing payment of the invoice together with such supporting evidence as the Council may have.  |
| Response to Council notice |
| Within five (5) Working Days following receipt by the Provider of any supporting information served by the Council pursuant to Clause 23.8 (Disputed Amounts) the Provider shall respond to the Council by notifying the Council as to whether or not it agrees with the statements made in that notice. If the Provider indicates that it does agree or if the Provider fails to make such a response within the time limit, the Provider shall have no entitlement under this Contract for payment by the Council of any sums due in the relevant disputed invoice. |
| Disputes |
| If the Provider responds (pursuant to Clause 23.9 (Response to Council Notice) that it does not agree with all or any of the statements made in any notice served by the Council pursuant to Clause 23.8 (Disputed Amounts), the matter or matters in question shall be determined under the Dispute Resolution Procedure.  |
| If the determination of any dispute conducted pursuant to Clause 23.9 shows that the Provider is entitled to be paid the full amount of the disputed invoice, the Council shall pay the outstanding Invoice in full, with interest in each case on that amount at the Prescribed Rate calculated on a daily basis from the date on which the disputed invoice would have been paid had it been paid as a final invoice pursuant to Clause 23.4.  |
| If the determination of any dispute conducted pursuant to Clause 30 shows that the Provider is entitled to be paid a partially agreed amount of the disputed invoice, the Provider shall submit a credit Note of the relevant amount to the Council. Upon receipt and settlement of the credit Note, the Council shall pay the remaining agreed balance of the invoice, with interest in each case on that amount at the Prescribed Rate calculated on a daily basis from the date on which the disputed invoice would have been paid had it been paid as a final invoice pursuant to Clause 23.4.  |
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| Miscellaneous |
| All amounts due under the Contract shall be exclusive of VAT. If applicable, the Provider shall add VAT to each final invoice at the prevailing rate and shall show any relevant VAT as a separate calculation. |
| The Council shall not be responsible for the payment of any charges for Operated Plant supplied in excess of the Operated Plant required by the Order or any variation of it unless confirmed in writing by a Help Desk e-mail. |
| No payment of or on account of the Hire Price shall constitute any admission by the Council as to proper performance by the Provider of its obligations under this Contract. |
| If an adjusted Pricing Schedule is not agreed until after a variation has taken place, the Council will continue to pay the Provider in accordance with the Pricing Schedule. The Council will then be entitled to pay or recover from the Provider, whichever the case may be, the sum, if any, which is equal to the difference between the amount which should have been paid and the amount actually paid. |

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| Legislation |
| Any Operated Plant provided under this Contract must comply with all relevant Legislation current at the time of hire and throughout the duration of the hire period. |
| Inspection of Operated Plant and Premises |
| It shall be a condition of the Contract and of the receipt of the Tender that the Provider shall (without hindrance) permit any authorised officer or agent of the Council to enter at any reasonable time without prior notice upon any land, premises, vehicles or Operated Plant which are used for the purpose of this Contract to: - |
| Carry out inspections to ascertain whether the Operated Plant is fit for purpose, safe, and fully compliant with current legislation |
| To inspect and ascertain if the appropriate documentation is in place, including but not limited to, maintenance records, training records, certificates of competency, Operator’s Licence and LOLER test certificates relating to all lifting equipment and accessories. |
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| Indemnity and Liability  |
| The Provider shall indemnify the Council in full for all damage or injury to anyone or to any property (including Operated Plant) and against all actions, claims, demands, costs, or expenses awarded against or incurred by the Council (including the costs of transport, labour, administration and legal expenses on an indemnity basis to the Council) arising from any defect or fault in the Provider’s Operated Plant or operation thereof; or |
| Any act or omission of the Provider in supplying, delivering and, where applicable installing the Operated Plant; without prejudice to any other provision of the Contract, the Provider shall fully indemnify the Council against any claims made against it as a result of any failure by the Provider to comply with any statutory provision relevant to the supply of the provision of Operated Plant. |
| Clause 26.3 shall not apply in relation toany failure by the Council to make proper payment to the Provider in accordance with the terms of the Contract; and |
| The Provider's liability to indemnify the Council arising under Clauses 26.1 and 26.2 above shall be without prejudice to any other right or remedy of the Council arising under this Contract.The Provider shall immediately notify the Council representative of any accident that occurs on the Council's premises/Sites and provide the Council with a copy of the accident investigation report |
| In the event of the Provider withdrawing from this Contract or any part or parts thereof such withdrawal shall not affect its ability to perform any Services in respect of which it has already been instructed to perform. |
| Insurance |
| The Provider shall effect and maintain with a reputable insurance company a policy or policies providing an adequate level of cover for any loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Provider's carrying out or failing to carry out obligations under the Contract and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.  |
| The Provider shall throughout the Contract Period as a minimum effect and maintain the insurance cover set out in the Tender. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in Clause 27.1. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.  |
| The Provider shall prior to the Contract Commencement Date and upon the relevant policy renewal date shall supply to the Council a copy of the policies affecting the insurances referred to in Clause 27.2. Such documents shall be provided by the Provider to the Council within five (5) days of renewal.  |

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| Variation of the Contract |
| No amendment or variation of the terms of this Contract shall be effective unless made or confirmed in writing and signed by the Parties to this Contract. 28.2 Clause 28.1 shall not apply to:1. Hire Rate refresh in accordance as set out in section 4 of Schedule 2
2. the addition of Operated Plant to the Pricing Schedule;
3. Further competitions in accordance with the Pricing Schedule.
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| Termination or Rescission  |
| The Council may terminate the Contract (in whole or in parts) with immediate effect by serving notice in writing to the Provider on or at any time after the occurrence of any of the following events:  |
| The Provider committing a material breach of this Contract which is incapable of remedy; or |
| The Contactor committing a material breach of an obligation under this Contract which is capable of remedy and failing to remedy the breach to the Council’s reasonable satisfaction within a period of 30 days following the day of receipt of written notice from the Council giving details of the breach and requiring its remedy; or |
| The Provider has received more than three (3) notices of the kind referred to in paragraph (b) in a rolling twelve (12) month period, regardless of whether the relevant breach is remedied; or |
| The Provider commits persistent minor breaches of the Contract whether capable of remedy or not; or |
| The Provider commits repeated and/or serious non-compliance with the provisions of the Health and Safety at Work Act 1974 and/or any subsequent Health and Safety Regulations; |
| The Contactor (in the reasonable opinion of the Council) being guilty of serious misrepresentation in providing any information required by the Council during the tender process leading to the award of this Contract; or |
| The Provider stops payment of its debts, becomes insolvent, ceases or threatens to cease carrying on its business or otherwise ceases to be capable of supplying the Services; or |
| The Provider is in default of any duty of care or any fiduciary or statutory duty owed to the Council and/or any employee or agent of the Council; or |
| There is a change of ownership or control of the Provider which, in the reasonable opinion of the Council will have a material impact on the supply of the Services or the reputation of the Council; or |
| Upon the bankruptcy of the Provider or upon a receiving Order being made against the Provider or the Provider presenting a petition in bankruptcy or upon the Provider making any arrangement with or assignment in favour of his creditors or (where the Provider is a Company) upon an Order being made by the Court to wind up the Company or upon a Receiver being appointed or upon the Company going into liquidation for the purposes of reconstruction; or upon the Provider being subject of an administration Order; or |
| The Provider commits a Prohibited Act, |
| The Provider agrees that upon termination for any reason (under Clause 29.1 or otherwise) or expiry of the Contract it shall not be entitled to make a claim against the Council in relation to costs incurred by the Provider in providing the Services or costs incurred in acquiring Operated Plant, equipment and/or materials used in the provision of the Services or in engaging third Parties in connection with the Services whether or not such costs were amortised in the calculation of the Hire Price payable by the Council under the Contract. For the avoidance of doubt, the Provider will not be restricted from making any claim in respect of the Hire Price to the extent the Hire Price is outstanding and due and payable |
| The termination of this Contact shall not affect the continuing rights and obligations of the Provider and the Council under Clauses 23 (Invoicing and Payment), 26 (Indemnity & Liability), 27 (Insurance), 29 (Termination or Rescission), 30 (Dispute Resolution Procedure), 37 (Data Protection), 38 (Freedom of Information), 40 (Notices), 42 (Severability) and 44 (Law and Jurisdiction) or other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequence of such termination. |
| Any termination (in whole or in part) of the Contract will not prejudice the rights, obligations and duties of each Party arising prior to such termination taking effectThe Provider will not in the event of notice of termination of this Contract or from a date of (12) months before expiry of the Contract Period carry out a Prohibited Action. |
|  29.6 The Council reserves the right to terminate the Contract where:the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015; orthe Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; orthe contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU. |
| Dispute Resolution Procedure  |
| Any dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this Clause 30. |
| If a dispute arises between the Council and the Provider in connection with the Contract (including any dispute as to the construction or meaning of any words in these conditions), the Parties shall each use reasonable endeavours to resolve such dispute by means of prompt, bona fide discussion at an appropriate managerial level. |
| If a dispute is not resolved within 14 days of it having been referred to a managerial level for discussion then either Party may refer it to the appropriate Head of Service or equivalent officer of each Party for resolution who shall meet for discussion within 14 days or longer period as the Parties may agree. The Parties will use all of their respective reasonable endeavours to resolve it by negotiation. |
| If the Parties fail to resolve the dispute through such negotiations either Party may refer the matter to an adjudicator (“the Adjudicator”). The Adjudicator shall be selected by agreement between the Parties, or where the Parties are unable to agree on the identity of the adjudicator within 14 days, the President for the time being of the Chartered Institute of Arbitrators shall appoint the Adjudicator within thirty (30) Working Days of any application for such appointment by either Party. |
| Within five (5) Working Days of nomination in relation to a particular dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in Order to resolve the dispute. |
| In any event, the Adjudicator shall provide to both Parties his written decision on the dispute, within twenty (20) Working Days of the Adjudicator's nomination to consider the relevant dispute (or such other period as the Parties may agree after the reference) or thirty (30) Working Days from the date of reference if the Party which referred the dispute agrees. The Adjudicator's decision shall not state any reasons for his decision. Unless and until revised, cancelled or varied by the English Courts, the Adjudicator's decision shall be binding on both Parties who shall forthwith give effect to the decision. |
| The Adjudicator’s costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.  |
| The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.  |
| The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.  |
| All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clause 36 (Confidentiality and Publicity) and Clause 38 (Freedom of Information), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator’s work.  |
| The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.  |
| If:- |
| Either Party is dissatisfied with or otherwise wishes to challenge the Adjudicator’s decision made in accordance with Clause 30.6 (Adjudicator’s Decision); or |
| Both Parties agree,  |
| then either Party may (within twenty (20) Working Days of receipt of the Adjudicator’s decision, where appropriate), notify the other Party of its intention to refer the dispute to the courts.  |
| The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause 30 and shall give effect forthwith to every decision of the Adjudicator and the courts. |

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| Assignment and Sub-Contracting  |
| Subject to Clause 5, the Provider shall not assign, Sub-Contract or in any other way dispose of this Contract or any part of it without prior written consent of the Council. Sub-Contracting any part of the Agreement shall not relieve the Provider of any obligation or duty attributable to the Provider under the Agreement. |
| The Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own and as such are responsible under the terms of Clause 21.6.  |
| Health & Safety |
| Without prejudice to the general duty of the Provider to comply with the Health and Safety at Work Act, 1974 the Provider shall comply with any code of practice issued there under by the Health and Safety Commission and any Health and Safety Regulations issued there under by the Secretary of State where such code of practice or Health and Safety Regulation is applicable to this Contract. |
| Record keeping and Monitoring  |
| In Order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Provider shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Provider shall on request allow the Council or the Council’s representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract. |
| The Provider will at its own cost, provide any information that may be required by the Council to comply with the Council’s procedures for monitoring of the Contract |

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| TUPE |
| In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Provider will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Provider) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE. |
| The Provider authorises the Council to pass any information supplied to any Replacement Provider or potential Replacement Provider and the Provider will secure all necessary consents from relevant Employees in Order to do this. |
| The Provider will keep the Council and any Replacement Provider indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this Clause or inaccuracies in or omissions from the information provided. |
| Modern Slavery |
|  In performing his obligations under this Contract, the Contractor shall and shall ensure that each of its sub-contractors shall comply with the Modern Slavery Act 2015 |
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| Confidentiality and Publicity |
| Any documents provided by the Council and information which the Provider may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council. |
| All Confidential Information provided by the Council to the Provider shall be returned to the Council at the end of the Contract. |
| Without prejudice to the Council’s obligations under the FOIA or EIR, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed). |
| Both Parties shall take all reasonable steps to ensure the observance of the provisions of this Clause by all of their servants, Employees, Sub-Contractors, agents, professional advisors and consultants.  |
| Data Protection |
| The Provider shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the DPA. |
| Freedom of Information  |
| The Council is subject to the FOIA and the EIR (“the Acts”). As part of the Council's duties under the Act, it may be required to disclose information forming part of the Tender or Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not apply any exemptions under the Acts. |
| The Contactor shall assist and co-operate with the Council (at the Provider’s expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.  |
| No Waiver  |
| No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver, is in writing and is signed by the relevant Party by an appropriately authorised representative.  |
| Notices  |
| Any notice required by this Contract to be given by either Party to the other shall be in writing and shall be served personally or by registered post to the appropriate address notified to each other. |
| Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served 48 hours after it was posted and any notice sent by fax will be deemed to have been served 24 hours after it was despatched.  |
| Force Majeure  |
| No Party shall be entitled to bring a claim for a breach of obligations under the Contract by the other Party or incur any liability to the other Party for any loss or damages incurred by that Party to the extent that a Force Majeure event occurs and it is prevented from carrying out obligations by that event of Force Majeure. |
| Industrial action by, illness or shortage of the Provider’s employees agents or Sub-Providers, failure or delay by any of the Provider’s suppliers to supply goods, components, Services or materials and the breach of the Provider’s warranties under Clause 3 shall not be regarded as an event of Force Majeure. |
| In the occurrence of an event of Force Majeure, the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure, including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effectStoppages due to inclement or severe weather conditions, shall be paid for at Standard Working Rate.  Provided that in the event of a prolonged period of inclement or severe weather conditions, when the Operated Plant cannot be usefully employed on that Site the Council shall at its sole discretion terminate or suspend the Hire. |
| As soon as practicable, following such 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 facilitate the continued performance of the Contract. |
| Subject to Clause 41.2, no Party shall be liable for delay in performing or failure to perform its obligations under this Contract if such delay or failure results form Force Majeure. Such delay or failure shall not constitute a breach of this Contract and the time for performance shall be extended by such period as is equal to the delay by which performance is prevented by Force Majeure.  |
| In the event of Force Majeure continuing for more than two (2) months either Party may give written notice to the other to terminate the Contract immediately or on a set termination date.  |
| If the Contact is terminated in accordance with Clause 41.7 neither Party will have any liability to the other except that any rights and liabilities which accrued prior to the termination shall continue to exist. |

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| Severability |
| If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract. |

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| Third Party rights  |
| Nothing in this Contract confers any right or benefit upon a third Party and for the avoidance of doubt; the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this agreement. |

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| Law and Jurisdiction  |
| This Contract shall be governed by the laws of England and the exclusive jurisdiction of the English courts and the Provider shall comply at all times with all relevant Acts, Regulations, Orders, Rules of Law or E.U. Directives. |

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| Legislative compliance |
| The Provider shall perform its obligations under this Contract in accordance with all applicable Legislation and Guidance from time to time in force. |

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| Entire Agreement |
| Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause 46 shall not exclude liability in respect of any fraudulent misrepresentation. |

**SCHEDULE 2**

**FAIR DISTRIBUTION OF ORDERS**

1. **Order Call off Functionality under a Dynamic Purchasing System**

1.1 Prior to the commencement of the Contract, all successful Providers will submit hire rates as per the Pricing Schedule, per category Item which shall be uploaded to The System. The County has been split into 6 geographical zones for Pricing Schedule purposes. The zone is identified at the time the hire is requested by the Site.

* 1. Based on the rates uploaded from the Pricing Schedule and depending upon the Order information entered at the time of request, including Operated Plant item required, hire period and delivery zone, The System will display a list of Providers, with the overall lowest hire price (inclusive of delivery charges and applicable hire rates) displayed at the top of the list.
	2. The Hire Desk will attempt to call the Provider displayed at the top of the list to place the Order in accordance with Clause 4.
	3. If the Hire Desk is unable to contact the Provider by telephone within a reasonable timescale, a reason will be recorded in The System, to the effect that the Provider is not contactable. This will form an auditable record within The System, explaining why the Council have not chosen the Provider at that time of Order.
	4. If the Provider at the top of the list is contactable but is unable to fulfil the requirements of the Order and provide the Operated Plant required, a reason will be recorded in The System, to the effect that the Provider is unable to supply the Operated Plant at time of Order. This will form an auditable record within The System, explaining why the Council have not chosen the Provider at that time of Order.
	5. If the Hire Desk is unable to select the Provider at the top of the displayed list at the time of Order, for reasons specified in Clauses 1.4 and 1.5, the Hire Desk will select the next Provider from the list and continue until a Provider is able to fulfil the Order requirements.
	6. A confirmation email will be sent to the provider who is able to fulfil the Order requirements. Please refer to Appendix A for further information.

**N.B**. Due to the nature of a Dynamic Purchasing System, eligible Providers may be added at any time during the Contract Period. The Contract also provides for Hire Rate refreshes and the addition of items of Operated Plant to the Pricing Schedule. For the avoidance of doubt, the selection functionality shall not be affected although the additional information may result in different results being produced.

1. **Further Competition**

2.1 Although the bulk of Orders will be issued in accordance with paragraph 1 above there will be instances where a further competition exercise will be required. The Council reserves the right to utilise a further competition exercise under this Dynamic Purchasing System to hire Operated Plant and Equipment for either multi-zonal and/or long term and/or major schemes or projects that require the supply of such Operated Plant and Equipment.

2.2 The Council will identify those Providers who have indicated in the Pricing Schedule that they can supply the item(s) or Operated Plant or Equipment required and will issue a further competition document to all those Providers via the NEPO Portal. Providers will be required to certify they meet essential criteria and submit prices within the period specified in the further competition document.

2.3 For the avoidance of doubt a further competition exercise will not affect Providers’ prices already submitted in respect of the opportunities under paragraph 1. Providers are not obliged to bid for further competition opportunities offered.

1. **Temporary Exclusion**
	1. Where non-conformance(s) have been recorded in The System and the Council deems the non-conformance(s) to be of a serious nature and/or repetitive minor non-conformance issues the Council will contact the Provider to arrange a meeting to discuss performance issues and the appropriate corrective or preventative measures to be actioned. The Council will determine the timeframe for the Provider to comply with the corrective action.
	2. Following meetings between the Provider and the Council to attempt to resolve conformance issues, if in the Council’s opinion that the Provider is not able to comply with the corrective action to the satisfaction of the Council, the Council, without prejudice to any of the rights and remedies available to the Council whether or not contained elsewhere in the Contract, the Council may suspend the Provider from receiving any further Order(s) until the corrective action is met.
	3. During temporary exclusion, the Council reserves the right to select the next available Provider from the list. In such circumstances, the Hire Desk will record a reason in The System, to the effect that the Provider is not suitable at present due to outstanding corrective action.
	4. Once all corrective actions have been met the Provider will be re-instated and the temporary suspension will be removed. The Provider shall be given fair opportunity to gain further Orders from then on. however the Council will closely monitor the Providers performance, for a period determined by the Council.
	5. During any period of suspension Providers must not provide Operated Plant as Sub-Contractors or in any other capacity to any Council works without written authorisation of the County Fleet Manager.
	6. If a temporary suspension is placed upon a Provider within The System in accordance with Clause 2.3, upon satisfactory resolution of the issues, the Council shall remove the temporary flag within The System and the Provider shall be given fair opportunity to gain further Orders from then on. The Provider will be advised of the satisfactory outcome of conformance monitoring in writing.
2. **Hire Rate Refresh**

4.1 Providers will be given an opportunity to refresh their hire rate every six (6) months. This can result in either an increase to the hire rate or a reduction to the hire rate. Providers will be notified of the price hire rate refresh through the NEPO Portal and invited to complete a pricing schedule with any amendments to the existing rates (if applicable). Any amendment to the Providers hire rate may impact on the Provider position on the list.

**SCHEDULE 3**

**PRICING SCHEDULE**

**PLEASE REFER TO ATTACHED SPREADSHEET**

**SCHEDULE 4**

**SPECIFICATION**

1. **Operated Plant**

1.1 The Provider agrees that the Operated Plant supplied by the Provider to the Council under this Contract shall be:

### 1.1.1 The best quality, material, design and workmanship available;

### 1.1.2 without fault and fit for the purpose required by the Council;

### 1.1.3 Safe for its proper and ordinarily intended use;

### 1.1.4 Conform in all respects with the Order and specification supplied or advised by the Council to the Provider and

1.1.5 Comply in all respects with relative and current Road and Vehicles (Construction & Use) Regulations 1986, Transport and Health & Safety Legislation. In addition, where design and manufacturer compliance requires it must meet EC Standards, British Standards Specification and Code of Practice issued by the British Standards Institution (BSI). Signs and Notices in accordance with the current regulations and ready for immediate use upon delivery and throughout the Contract use, including certification compliance where appropriate to the specific Operated Plant.

## 1.2 Without limitation or qualification to Clause 1.1 above the Provider further agrees that in providing Operated Plant to the Council the Provider will ensure that:

### 1.2.1 Any Operated Plant including trailers for use on the public highway complies with the current Road Vehicles (Construction & Use) Regulations 1986 and the Road Traffic Act 1988 (as amended), Transport Health & Safety legislation and be in good mechanical condition and fit for immediate use.

### 1.2.2 Where the Operated Plant requested by the Council is to be operated on the public highway the Operated Plant meets the requirements of all current relevant legislation for use on the public highway, including but not limited to all licence, insurance and taxation requirements.

### 1.2.3 In order to comply with the General Vehicles Issues of Chapter 8, where appropriate, Operated Plant must be supplied with appropriate warning lights.

### 1.2.4 Where appropriate, the Operated Plant will be supplied with flashing beacons and audible reversing warning.

### 1.2. 5 All vehicles, Operated Plant and Equipment complies with the Provision and Use of Work Equipment Regulations 1998 (PUWER) and where appropriate the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER). In addition, the Provider must inform the Council when the Operated Plant or equipment used for lifting is due its next examination and must make arrangements for the examination to be undertaken when due. Operated Plant and ancillary equipment used for lifting must be supplied with a copy of its thorough examination. Evidence of such examinations must always be available for inspection on Site and must be accessible to the Council upon request.

###  1.2.6 Where appropriate vibratory rollers shall be equipped with a device indicating the frequency at which the mechanism is operating and the speed of travel which can be read from the ground. This requirement may from time to time be necessary to ensure the Council is able to meet with the demands of the Specification for Highway Works, Clause 612:10: vii.

### 1.2.8 Any Operated Plant which could overturn during operation will be supplied fitted with a Roll over Protection System (ROPS). A Falling-Object Protection System (FOPS) must be provided where people are carried on any Operated Plant and there is at significant risk of injury from falling objects while it is in use. Where ROPS and FOPS are supplied appropriate seat belts must be fitted in Order to comply with the requirements of PUWER 1998. Operators must wear the seat belts at all times.

**SCHEDULE 5**

**FORM OF TENDER**

**SCHEDULE 6**

**TENDER**