

# **Invitation to Tender**

##  for the supply of

**Repair and Maintenance of Household Waste Recycling Compactors**

Issue Date: 6th April 2021 (12:00 noon)

**Return Date: 3rd May 2021 (12:00 noon)**

Mrs Helen Charity

Lincolnshire County Council

Waste Services

Newland

Lincoln,

LN1 1LY

Email : Helen.charity@lincolnshire.gov.uk

**Contents**

[Invitation to Tender 4](file:///%5C%5Clincolnshire.gov.uk%5Cfolderredir%24%5CDesktop%5Chelen.charity%5CDesktop%5CCompactors%5CITT%20RM%20HWRepair%20and%20Maintenance%20of%20HWRC%20Compactors%20-%20FINAL%20Jan%202021.docx#_Toc62742569)

[for the supply of 1](file:///%5C%5Clincolnshire.gov.uk%5Cfolderredir%24%5CDesktop%5Chelen.charity%5CDesktop%5CCompactors%5CITT%20RM%20HWRepair%20and%20Maintenance%20of%20HWRC%20Compactors%20-%20FINAL%20Jan%202021.docx#_Toc62742570)

[Section 1 Information for Bidders 4](#_Toc62742571)

[Glossary 4](#_Toc62742572)

[1.1 Introduction 19](#_Toc62742573)

[1.2 The Requirement 19](#_Toc62742574)

[1.3 Indicative Procurement Timetable 20](#_Toc62742575)

[1.4 Overview of the Process 20](#_Toc62742576)

[1.5 Evaluation of Tenders 20](#_Toc62742577)

[1.6 Award Criteria 21](#_Toc62742578)

[1.7 Council Decision Process 24](#_Toc62742579)

[1.8 Award of Contract 24](#_Toc62742580)

[Section 2 Instructions To Bidders And Conditions Of Tender 25](#_Toc62742581)

[2.1 General Instructions 25](#_Toc62742582)

[2.2 Completing the Form 28](#_Toc62742583)

[2.3 Submitting the Form 29](#_Toc62742584)

[2.4 Rejection of the Tender 30](#_Toc62742585)

[2.5 Acceptance of Tender 31](#_Toc62742586)

[2.6 Bidder’s Warranties 31](#_Toc62742587)

[Section 3 - Specification 33](#_Toc62742588)

[3.1 General Information 33](#_Toc62742589)

[3.2 Description of the Service Required 35](#_Toc62742590)

[3.3 Scheduled Maintenance (6 month and annual Maintenance Services) 36](#_Toc62742591)

[3.4 Unscheduled/Emergency Repairs to Compactors 37](#_Toc62742592)

[3.5 Parts 38](#_Toc62742593)

[3.6 General Supplier Obligations 38](#_Toc62742594)

[3.7 Contract Management 39](#_Toc62742595)

[3.8 Monthly Service Reports 39](#_Toc62742596)

[3.9 Health and safety 40](#_Toc62742597)

[3.10 Performance Monitoring 41](#_Toc62742598)

[3.11 Contingency Planning 41](#_Toc62742599)

[Section 4 - Contract & Performance Management Arrangements 42](#_Toc62742600)

[4.1 General Information 42](#_Toc62742601)

[4.2 Performance Deductions 42](#_Toc62742602)

[**Calculation of Performance Deduction** 49](#_Toc62742603)

[Section 5 Bidders Responses – Proposed WorkingMethods 52](#_Toc62742604)

[Section 6 Pricing Schedule 57](#_Toc62742605)

[Section 7 Payment Details 58](#_Toc62742606)

[Section 8 Form of Tender 60](#_Toc62742607)

[Section 9 Collusive Tendering Certificate 62](#_Toc62742608)

[Section 10 Commercially Sensitive Information Disclosure Form 64](#_Toc62742609)

[Section 11 Bidder Checklist 66](#_Toc62742610)

[Section 12 - Terms and Conditions 67](#_Toc62742611)

[Section 13 - Appendices 151](#_Toc62742612)

[Appendix One – COMPACTOR MAINTENANCE Service sheets (6 montly and annual) 152](#_Toc62742613)

[Appendix Two – Compactor Model numbers 155](#_Toc62742614)

[Appendix Three – Monthly Service Report 157](#_Toc62742615)

[APPENDIX FOUR– LIST OF REPAIRS UNDERTAKEN 2018/2019 158](#_Toc62742616)

[APPENDIX FIVE – COMPACTOR DEFECT NOTICE 161](#_Toc62742617)

1. Information for Bidders

Glossary

Words defined in the Terms and Conditions of Contract shall have the same meaning throughout the Invitation to Tender document.

|  |  |
| --- | --- |
| **Award Criteria** | The criteria by which the Council will evaluate the Bidder's responses to the Proposed Working Method Questions in respect of whether the contract will be delivered to the required standards and level of quality |
| **Affected Party** | Means the Party seeking to claim relief in respect of a Force Majeure Event. |
| **Agents** | Mean those to lease and run the HWRCS on behalf of the Customer.  |
| **Approval** | Means the prior written consent of the Customer. |
| **Best Value** | Means arrangements to secure continuous improvement in the way the Customer’s functions are exercised having regard to a combination of economy, efficiency and effectiveness. |
| **Bidder** | Means the organisation submitting the Invitation to Tender document |
| **Bribery Act** | Means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation. |
| **Calendar Days** | Means each day of the calendar, including Saturdays, Sundays and Bank Holidays.  |
| **Change** | Means any variation to this Contract including to any of the Services and Service Levels. |
| **Change Control Procedure****Change of Control** | Means the procedure for changing this Contract as set out in Clause F3.Means:1. any sale, transfer or disposal of any legal, beneficial or equitable interest in a majority or all of the shares in the Supplier (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or
2. any other arrangements that have or may have or which result in the same effect as paragraph (a).
 |
| **Commercially Sensitive Information** | Means any Party's Information that:(a) if disclosed, could prejudice the other Party's commercial interests and/or(b) constitutes a trade secret. |
| **Commercial Waste** | Meaning given in section 75(7) of the Environmental Protection Act 1990 (EPA). |
| **Compactor(s)****Compactor Defect Notice****Compactor Maintenance Service****Compactor Maintenance Service Schedules****Compactor Maintenance Service Sheets****Confidential Information** | Means any Compactor at the Customer's Household Waste Recycling Centre (Customer Sites); this will also include any additional compactors added to the Customer Sites during the contract period. Should the Customer need to procure new or additional Compactors and any existing or new HWRC then the makes and models of the compactors may be subject to change. Means the Notice issued by the Customer to the Supplier via telephone and then followed up by an email to inform the Supplier of a fault with the compactor. Supplier must attend the Customer Site by the end of the next calendar day following receipt of the Defect Notice (See Appendix 5).Means the 6 monthly and annual Services undertaken at the Customer Sites by the Supplier. Each compactors initial 6 monthly service must be completed within 6 months of the Service Commencement Date. Each subsequent service (either annual or 6 month) shall be completed not sooner than 5 months or more than 7 months after the last service on that compactor. Means the pre-agreed dates that the Supplier has provided to the Customer 7 days before the Service Commencement date or 14 days before the anniversary of the Contract commencement date which states when the Supplier will be on the Customer Sites to undertake the Compactor Maintenance Service (6 monthly and annual). Mean the 6 monthly and Annual service check lists provided by the Customer in Appendix One for the Supplier to complete during a 6 month or annual service.Means 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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data.  |
| **Consents** | Means: any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services, including but not limited to: 1. all relevant Service Vehicle safety and mechanical testing; and
2. any other consent required to undertake the Services; and
3. any necessary consent or agreement from any third party needed either for the performance of the Supplier’s obligations under this Contract or for the provision by the Supplier of the Services in accordance with this Contract.
 |
| **Contingency Plan** | Means the Supplier's plan setting out the manner in which the Supplier shall plan for and respond to foreseeable eventualities including inter alia plans for emergencies, fuel shortages, breakdowns, contamination incidents, strike action and emergency recovery in order to ensure and maintain continuity of Services as the same may be amended in accordance with this Contract; |
| **Contract** | Means the formal written agreement entered into between the Supplier and the Customer for the provision of goods and/or services |
| **Contract & Procurement Procedure Rules** | Means the rules that sit within the constitution of the Council that provide the legal framework for procurement activity |
| **Contracting Authority** | Means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.   |
| **Contract Period** | Means the period from the Commencement Date to: (a) the date of expiry of the Initial Contract Period, or(b) following an extension pursuant to Clause A2.2 of the terms and conditions, the date of expiry of the extended period,or such earlier date of termination of the Contract in accordance with the Law or the provisions of this Contract. |
| **Contract Year** | Means a period of twelve (12) Months commencing on the Commencement Date and/or each anniversary of the Commencement Date. |
| **Conviction** | means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1 (1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988. |
| **COSHH** | Means the Control of Substances Hazardous to Health Regulations 1999. |
| **Council** | Means the organisation(s) that is seeking to award a contract. |
| **Critical Service Failure** | Means a failure to achieve a Service Level which is identified in the table set out in Section 3B and identified as a critical service failure therein. |
| **Crown** | Means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.  |
| **Customer** | Means the organisation(s) that is seeking to award a contract |
| **Customer’s Change Control Notice****Customer Contract Manager** | Means a notice served by the Customer on the Supplier requesting a Change in accordance with Clause F3 of the terms and conditions.Means the person identified as such in part 2 of Schedule 4 or any replacement person appointed by the Customer pursuant to Clause B4 of the terms and conditions, as the person responsible for managing the Customer’s overall relationship with the Supplier. |
| **Customer Representative****Customer Site(s)** | Means the person identified as such in Part 2 of Schedule 4 or any replacement person appointed by the Customer pursuant to Clause B4, being the person responsible for managing the delivery of the Services on behalf of the Customer.Means the Customer Household Waste recycling Centres at Boston, Bourne, Gainsborough, Grantham, Lincoln, Louth, Kirby on Bain, Skegness, Spalding, Sleaford and Market Rasen.And additional sites introduced by the Customer during the Contract Period.  |
| **Customers Sub-contractors or Agents** | Means any other contracted to the Customer to provide a service and may be used to transport Direct Deliveries of Contract Waste to the Supplier's Treatment Site.  |
| **Customers Waste Data Management System (WDMS)****Data Protection Legislation****Default** | Means the electronic system used by the Customer.Means (i) the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.Means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Contract. |
| **Defect** | Mean any error, fault or repair work needed on the Compactors that would trigger a Defect Notices to be raised.  |
| **Duty of Care Regulations** | Means Section 34(1) of the Environmental Protection Act 1990 imposes a duty of care on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste. |
| **Employment Checks** | Means the pre-appointment checks that are required by Law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks and the Supplier shall ensure that these meet the Customer's Disclosure and Barring Service Policy which is available at [http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-(incorporating-safer-recruitment)/87476.article](http://www.lincolnshire.gov.uk/jobs/manuals/employment-manual/recruitment-selection-and-induction/recruitment-and-selection-policy-%28incorporating-safer-recruitment%29/87476.article) |
| **Environmental Information Regulations** | Means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. |
| **Equality Legislation** | Means the Equality Act 2010 and such other acts and legislation to ensure, among others equality of access to goods and services, promotion of good relations between groups in society, the provision of reasonable adjustments for people with disabilities and non-discrimination and equality in employment. |
| **Equipment** | Means the Supplier’s equipment, plant, materials and such other items (including the Service Vehicles) supplied and used by the Supplier in the performance of its obligations under this Contract. |
| **European Waste Codes (EWC)** | Means the standard coding system that’s classifies and describes the type of waste. These are called EWC Codes (European Waste Codes) as specified in the List Of Wastes Regulations 2005. |
| **FOIA** | Means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. |
| **Force Majeure Event** | Means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Staff or any other failure in the Supplier’s or a Sub-Contractor’s supply chain. |
| **Force Majeure Notice** | Means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event. |
| **Formal Warning Notice** | Means a notice served in accordance with Clause H2.2. |
| **Fraud****GDPR** | Means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Customer.Means the General Data Protection Regulation (Regulation (EU) 2016/679). |
| **Good Industry Practice** | Means standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking under this Contract under the same or similar circumstances.  |
| **Incumbent Supplier****Index, Indexed, Indexation Base Date, Indexation Date and Indexable Items** | Means any supplier providing any service that constitutes or that shall constitute part of the Services immediately before the Transfer Date and Commencement Date of this Contract.Are all as identified in Schedule 3. |
| **ICT****ICT Environment** | Means information and communications technology.Means the Customer's system and the Supplier system.  |
| **Information** | Has the meaning given under section 84 of the FOIA and includes Personal data as defined under Data Protection Legislation.  |
| **Information Commissioner's Office** | Means the office of the Information Commissioner whose role is to uphold information rights in the public interest, and responsible for data protection in England, Scotland and Wales in accordance with provisions set out in Section 6 of the DPA.  |
| **Initial Contract Period** | Means the period from the Effective Date to the date of expiry set out in Clause A2 (Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract. |
| **Intellectual Property Rights** | Means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. |
| **ITT (Invitation to Tender)** | Means this document and the process by which the Council will obtain Tenders |
| **Key Personnel** | Means those persons identified in Schedule 4 for the roles attributed to such personnel. |
| **Law** | Means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Supplier is bound to comply.  |
| **Losses****Month****Monthly Service Report****Opening Hours****Performance Deduction** | Means all demands, losses, charges, damages, costs and expenses and other liabilities (including, but not limited to, any professional and/or legal costs and disbursements). Means calendar month.Means the Report provide by the Supplier to the Customer not more than 7 calendar days following the end of the calendar month, submit to the Customer a monthly service report, in electronic format as per specification item 3.8.Means any day that the Customer Household Waste Recycling Centres (Customer Sites) are contract to be open, please see specification item 3.1.3 for details. Please note that as a response to COVID-19 the above contracted opening hours have been amended (see Appendix Six for details of the current amended opening hours). Both the Contract opening hours above and the amended opening hours in Appendix Six are subject to change, the Supplier will be notified of any further amendments made to the opening hours. Means the amount (£) which becomes payable to the Customer by way of a reduction in the Services Charges payable under the Contract where the required Service Levels are not achieved as set out in Section 3B - Contract and Performance Management Arrangements and Service Level Agreement. |
| **Performance Management Framework****Party** | Means the performance monitoring system set out at Section 3B - Contract and Performance Management Arrangements and Service Level Agreement.Means a party to this Contract and the term Parties shall be construed accordingly. |
| **Persistent Breach****Prohibited Act****Public Contracts Regulations** | Means a Default which has occurred on three or more separate occasions within a continuous period of three (3) Months.Each of the following constitutes a Prohibited Act:(a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to:-(i) induce that person to perform improperly a relevant function or activity; or(ii) reward that person for improper performance of a relevant function or activity(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;(c) committing any offence:-(i) under the Bribery Act;(ii) under legislation creating offences concerning fraudulent acts;(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Customer; or(iv) Defrauding, attempting to defraud or conspiring to defraud the Customer.Means the regulations on public procurement which implements the European Union Directive 2014/24/EU into English law with effect from 26 February 2015. |
| **Quarter** | Means one of the four periods of three months into which the financial year is divided (January until March, April until June, July until September, and October until December) |
| **Quotation** | Means the completed submission returned to the Council by the Bidder |
| **RAMS** (Risk Assessment and Method Statements) | Means the information ( Risk Assessment and Method Statements) provided to the Customer by the Supplier as per Specification item 3.9.8 and 3.9.9 for both standard and non-standard operations.  |
| **Receipt** | Means the physical or electronic arrival of the invoice at the address of the Customer detailed at Clause A5.3 or at any other address given by the Customer to the Supplier for the submission of invoices. |
| **Regulatory Bodies****Relevant Conviction** | Means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Customer and “Regulatory Body” shall be construed accordingly.Means a Conviction that is relevant to the nature of the Services to be provided. |
| **Relevant Employees** | Means the employees of the Supplier who are wholly or mainly assigned to work in the provision of the Services and who are/shall be subject to a Relevant Transfer by virtue of the application of the TUPE Regulations. |
| **Relevant Transfer** | Means a transfer of employment to which the TUPE Regulations apply. |
| **Remediation Notice****Remediation Plan** | Means a written notice given by the Customer to the Supplier pursuant to Clause H7.1 to initiate the Remediation Plan Process.Means the plan agreed in accordance with Clause H7 for the resolution of a Default of the Supplier. |
| **Remediation Plan Process****Replacement Contractor** | Means the process for resolving certain of the Defaults of the Supplier as set out in Clause H7.Means any third party service provider appointed by the Customer to supply any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of this Contract. |
| **Request for Information** | Shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply). |
| **Service(s)** | Means the services to be supplied by the Supplier as specified and detailed in the Specification and the Working Methods. |
| **Service Charges** | Means the charges levied by the Supplier for the Services in accordance with the tariffs, scales, charges, invoicing methods and terms of payment as set out in this Contract including Schedule 3. |
| **Service Commencement Date** | Means the 1st July 2021. |
| **Service Failure** | Means a failure by the Supplier to deliver any part of the Services in accordance with the Service Levels. |
| **Service Levels** | Means the levels to which the Services are to be performed as set out in Section 3B – Contract and Performance Management Arrangements and Service Level Agreement. |
| **Service Report** | Means the Monthly electronic report produced by the Supplier and provide to the Customer's Representative no more than 7 calendar days after the end of the calendar month. See Specification 3.9.1 for details of what the Monthly Service Report shall include for the month in question.  |
| **Specification****Staff** | Means the description of the goods and/or services to be supplied under the Contract as set out in Sections 3a of the Invitation to TenderMeans all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract. |
| **Suitability Criteria** | The criteria by which the Council will assess the Bidder's responses to the Business Information in respect of whether or not they are a suitable organisation to enter into a Contract |
| **Supplier****Supplier Change Control Notice****Supplier’s Contract Manager** | Means the person, firm or company with whom the Customer enters into this Contract including the Supplier's Staff, agents and contractors and each Sub-Contractor.Means a notice served by the Supplier on the Customer requesting a Change in accordance with Clause F3.Means the person identified as such in Part 2 of Schedule 4 or any replacement person appointed by the Supplier pursuant to Clause B4, being the person responsible for managing the delivery of the Services on behalf of the Supplier. |
| **Supplier’s** **Representative** | Means the person identified as such in part 2 of Schedule 4or any replacement person appointed by the Supplier pursuant to Clause B4, as the person responsible for managing the Supplier’s overall relationship with the Customer. |
| **Tender** | Means the document(s) submitted by the Supplier to the Customer in response to the Customer’s invitation to suppliers for formal offers to supply it with the Services.  |
| **TUPE Regulations** | Means the Transfer of Undertakings (Protection of Employment) Regulations 2006. |
| **VAT** | Means value added tax in accordance with the provisions of the Value Added Tax Act 1994. |
| **Waste Collection Authorities or WCA** | Means the district councils within Lincolnshire responsible for kerbside collection of waste and are:-1. Boston Borough Council;
2. East Lindsey District Council;
3. City of Lincoln Council;
4. North Kesteven District Council;
5. South Holland District Council;
6. South Kesteven District Council; and
7. West Lindsey District Council.
 |
| **Working Day****Working Methods** | Means any day that the Customer Household Waste Recycling Centres (Customer Sites) are open, please see specification item 3.1.3 for details. The Contract opening hours Six are subject to change, the Supplier will be notified of any further amendments made to the opening hours. Means the details for delivery of the Services provided by the Supplier as set out at Schedule 2.Means the responses the Suppliers provide in Section 5 (Bidders Responses) of this ITT document.  |

* 1. Introduction
		1. This is a competitive procurement falling within Part 2 of the Public Contract Regulations 2015.
		2. A Prior Information Notice (“PIN”) **2020/S 100-243233** has been published in the Official Journal of the European Union in respect of this contract.
		3. This document is provided as part of the procurement process to identify a suitable Service Provider to enter into a contract with Lincolnshire County Council (the Customer) for the provision of Repair and Maintenance of Household Waste Recycling Centre Compactors. This document provides information relating to the scope of the Contract and the procurement process that the Council will follow as well as instructions for responding to the Invitation to Tender that represents the second stage of the procurement process.
		4. This document should be read in conjunction with the Selection Questionnaire (SQ). Where there are inconsistencies between the SQ and this document, the ITT document shall prevail.
	2. The Requirement
		1. Lincolnshire County Council in its capacity of Waste Disposal Authority is looking for a Supplier who is able to provide the Repair and Maintenance of Household Waste Recycling Centre (HWRC) Compactors for the Lincolnshire area.
		2. The Supplier shall provide maintenance services on both a six monthly and annual basis as well as the scheduled and/or emergency repair work for all compactors based at the following 10 Household Waste Recycling Centre's around Lincolnshire (Customer Sites). The Compactors are currently Thetford Compactors; however during the contract period additional compactors and/or different model compactors may be introduced.
		3. The Council’s detailed requirements are defined in the Specification at Section Three and Section four.
		4. Tenders are invited for the supply of services in respect of Repair and Maintenance of HWRC Compactors. This procedure is being conducted in accordance with the Council's Contract and Procurement Procedure Rules utilising the Invitation to Tender Procedure. The successful supplier will be responsible for providing the services, liaising closely with the Customer's Contract Manager John Coates.
		5. The Contract will be let for an initial period of 2 years intended to commence on 1st July 2021 with the option to extend for 2 further period(s) of 1 year up to a maximum contract period of 4 years.
	3. Indicative Procurement Timetable
		1. It is intended that the tender exercise follows the time-line detailed below:

|  |  |
| --- | --- |
| **Stage/Activity** | **Target Date** |
| **1** | Invitation to Tender Issued | 6th April 2021 |
| **2** | Deadlines for Questions | 26th April 2021 14:00 |
| **3** | Deadline for Bids | 3rd May 2021 12:00 noon |
| **4** | Evaluation | 3rd May – 24th May 2021 |
| **5** | Standstill Period | 24th May – 3rd June 2021 |
| **6** | Contract Award | 4th June 2021 |
| **7** | Initial Project Meeting | 17th June 2021 |
| **8** | Contract Start | 1st July 2021 |

* + 1. Please note the Council reserves the right to amend this time-table and steps are provided for indicative purposes only.
	1. Overview of the Process
		1. A two stage process is being used. Stage one of this process comprised of the submission and evaluation of the Selection Questionnaire. Only the top 5 candidates from that stage have been put through to stage two which is this Invitation to Tender and the subsequent evaluation of the proposed working methods questions and / or pricing schedules.
	2. Evaluation of Tenders
		1. An initial examination will be made to establish the completeness of submitted tenders.
		2. The evaluation of tender submissions will be based upon Award Criteria referred to in paragraph 1.6.2 below / Price Evaluation.
		3. Bidders should note that regardless of a bid’s overall merits, in the event that evaluating officers (acting reasonably) consider there to be a fundamental weakness (i.e. that a score of 0-1 is achieved on more than two occasions for any Proposed Working Method question) which is likely to impact adversely upon the supply of the services, then grounds will exist to exclude the bid from further consideration.
	3. Award Criteria
		1. The Council will accept the tender which is the most economically advantageous, i.e. a balance between cost and quality.
		2. The Award Criteria will be scored out of 100%, with bids evaluated on the following basis:

Prices and Costs 40%

Quality (Working Method Statements) 60%

**Price – 40%**

* + 1. Price will be usually be evaluated using the methodology below.
		2. In the example below, price accounts for 40% and therefore the quality aspect would be marked out of the remaining 60%.
		3. The maximum price % is given to the lowest submitted price. Other price scores will be calculated as a percentage of the maximum score based on their price in relation to the lowest price.
		4. NOT USED
		5. For example, in the table below Supplier 3 has submitted the lowest price and therefore receives maximum points. Supplier 1 has submitted a price 25% higher and therefore receives a score 25% lower.

|  |  |  |
| --- | --- | --- |
| **Supplier** | **Price** | **%** |
| **1** | **£125,000** | **30** |
| **2** | **£185,000** | **6** |
| **3** | **£100,000** | **40** |
| **4** | **£150,000** | **20** |
| **5** | **£225,000** | **0 \*** |

\*If a bid is more than twice the amount of the lowest price the equation will produce a negative number, in this case the bids score 0 points. ***Please note the figures used in the above table are purely for example purposes only and are not a reflection of anticipated tender prices.***

**Quality – 60%**

* + 1. Bidders will be scored on their responses to the Proposed Working Method Questions (Section 4) in relation to the requirements of the specification. The weighting applied to each of the quality sub criteria is shown in the table below.

|  |  |
| --- | --- |
| **Element** | **Weighting** |
| **Quality** | **60%** |
| Attendance to Customer Sites for Unscheduled / Emergency Repairs | 12% |
| Contingency Plans | 5% |
| Compactor Downtime | 14% |
| Compactor Maintenance Services | 4% |
| Service Commencement date ,Milestones and Resources | 10% |
| Health and Safety | 13% |
| Social Value | 2% |

* + 1. The quality element of the tender will be scored using the following scale of awarding marks between 0 and 4:

|  |  |
| --- | --- |
| **0** | **Completely unsatisfactory/unacceptable response**No response to the question or the response has major deficiencies and/or omissions. The response to the question completely fails demonstrate how the Tenderer will meet and comply with the aspects of the Specification and or the Contract and/or the Tenderer demonstrates no understanding of the question or context. The risk to the Council is very high. |
| **1** | **Poor response** The question is not answered satisfactorily and does not demonstrate a consistent and/or coherent approach to how the Bidder's solution will meet and comply with the aspects of the Specification and or the Contract covered by the question and demonstrates limited understanding of question or context. The response to the question contains omissions that would compromise the operational integrity of part or all of the service to be provided. The risk to the Council is high. |
| **2** | **Limited response**The response has some detail to provide confidence that contract requirements will be met but demonstrates some material deficiencies and/or omissions. The question is answered satisfactorily in part but a key aspect or aspects lack sufficient detail evidence or explanation to demonstrate a consistent and coherent approach to how the Bidder's solution will meet and comply with the aspects of the Specification and or Contract covered by the question. Any such omission would not compromise the operational integrity of the service provided even though it does not meet certain key aspects of the Specification covered by this question. The risk to the Council is medium. |
| **3** | **Good response** The response has sufficient detail to provide confidence that contract requirements will be met and/or demonstrates only very minor deficiencies and/or omissions. The response to the question is satisfactorily detailed and clearly demonstrates how the Bidder's solution will meet and comply, for the most part, with the aspects of the Specification and or the Contract covered by the question. Some minor aspects may lack sufficient detail evidence and/or explanation but any such omissions from the solution will not compromise the operational integrity of the service to be provided. The risk to the Council is low. |
| **4** | **Excellent response** The question is answered very well throughout and demonstrates a consistent and coherent approach to how the Bidder’s solution will meet and comply with the aspects of the Specification and or the Contract covered by the question with no deficiencies and/or omissions. The response to the question is detailed, clear and fully demonstrates how the Tenderer will meet and comply with the aspects of the Specification and/or the Contract with robust supporting explanation and evidence and/or the Tenderer demonstrates a sound understanding of the question or context. The risk to the Council is very low.  |

* + 1. The winning tender is the one which scores the greatest overall mark once the Price and Quality scores have been combined.
	1. Council Decision Process
		1. Following the evaluation of the Tenders, the Council will seek authority through its formal decision making processes to award the contract to the preferred Bidder, based upon the outcome of the above evaluation procedure.
	2. Award of Contract
		1. Following approval by the Council of the Preferred Bidder, all Bidders will be informed of the decision. A standstill period of 10 days will come into effect. All unsuccessful Bidders will receive detailed feedback.
1. Instructions To Bidders And Conditions Of Tender
	1. General Instructions
		1. Tenders must be submitted in accordance with the following instructions and conditions. Any Bidders that do not comply with these instructions or conditions may have their tender rejected.
		2. The Council reserves the right to disqualify any tender submission which is incomplete or not in accordance with paragraph 2.1.1 above.
		3. Prospective Bidders should be aware that canvassing (i.e. seeking the support of influential persons within the purchasing organisation) will lead to disqualification.
		4. The information that Bidders give in response to the Invitation to tender forms part of the legal representations of the Bidders organisation during the tender process. Any findings of misrepresentation may result in any subsequent contract being terminated.
		5. The Bidder’s written response to any information required by the Council will be taken into account in the evaluation of competing tenders and if approved, will be binding but will not detract from the Specification nor Conditions of Contract.
		6. Bidders should note that wherever reference is made to any external assessment body or external accreditation standard, such reference shall be deemed to include reference to any equivalent body or standard established in other member states of the European Union.
		7. Bidders are advised that any contract(s) resulting from this procurement exercise will be subject to conditions which require the Supplier, as an employer, to comply with all statutory obligations to staff (and to applicants for employment) under all equality and non-discrimination laws (and amendments thereto) and with any statutory instruments, orders, guidance and codes of practice made thereunder.
		8. The Council does not bind itself to accept any offer resulting from the Invitation to Tender and reserves the right not to award any contract under this procurement process.

**The Council`s Right to Reject Solutions**

* + 1. The Council reserve the right to reject or disqualify a Bidder and/or the members of the Bidder's Team where:-
1. there is a change in identity, control, financial standing, previous bid position, structure or other factor impacting on the selection and/or evaluation process affecting the Bidder and/or the members of the Bidder's Team (including but not limited to a change in the Bidder's Team from the members who completed the Selection Questionnaire and/or a failure to comply with the Council's requirements set out in section Three below;
2. where a Bidder is in receipt of confidential information belonging to another the Council reserves the right to reject or disqualify the Bidder and/or the members of the Bidder's Team which disclosed the information **and** the Bidder and/or the members of the Bidder's Team which received it.

**Confidentiality**

* + 1. All documentation and information issued by the Council relating to the procurement process shall be treated by the Bidder as private and confidential for use only in connection with the procurement process and any resulting contract and shall not be disclosed in whole or in part to any third party without the prior written consent of the Council.
		2. All bidding documentation and information which an organisation may have as a result of it being a member of a bidding consortium (whether information of the Council or that consortium) must and shall be treated by that organisation as private and confidential to that consortium and must not and shall not be shared outside of that consortium in particular in circumstances where an organisation is a member of more than  one consortium that organisation  must not and shall  not share confidential information with competing Bidders.
		3. The Invitation to Tender and the associated documents are being made available by the Council on condition that:-
* Bidders shall at all times treat them as confidential;
* Bidders shall not disclose, copy, reproduce, distribute or pass them to any other person at any time;
* Bidders shall not use this Procurement Pack and the associated documents for any purpose other than for the purposes of preparing (or deciding whether to prepare) a response to the Solution.
	+ 1. Bidders shall ensure that each member of the Bidder's Team who receives any of the information is made aware of, and complies with, the provisions of this section as if they were a Bidder.
		2. All information provided to the Bidder by the Council shall be regarded as confidential and used only to prepare a response to any clarification questions. The questionnaire remains the property of the Council and must be returned upon demand.

**Freedom of Information**

* + 1. The Bidder acknowledges that the Council is obliged under the Freedom of Information Act (FOIA) to disclose information to third parties subject to certain exemptions. This includes the information given in relation to this invitation to tender process. The Bidder therefore accepts and acknowledges that the decision to disclose information and the application of any exemptions will be at the Councils sole discretion. The Council will act reasonably and proportionately in exercising its obligations under the FOIA as to whether any exemptions under section 43 of the FOIA may be applied to protect the Supplier’s legitimate commercial and trade secrets.
		2. Bidders should state at Section 10 if any of the information supplied by them is confidential or commercially sensitive or should not be disclosed in response to a request for information under the Act. Bidders should state why they consider the information to be confidential or commercially sensitive and for how long.
		3. This will not guarantee that the information will not be disclosed but will be examined in the light of the exemptions provided in the Act.

**Information, Costs and Expenses**

* + 1. The Bidder is responsible for obtaining all information necessary for the preparation of its submission and all costs expenses and liabilities incurred by the Bidder in connection with the preparation and submission of the tender will be borne by the Bidder.
		2. Bidders should satisfy themselves of the accuracy of all fees, rates and prices quoted, since Bidders will be required to hold these or withdraw their Tender in the event of errors being identified after the submission of Tenders.
		3. If a Bidder fails to provide fully for the requirements of the Specification in the Tender it must either:
1. absorb the costs of meeting the full requirements of the Specification within its tendered price; or
2. withdraw its Tender.

**Research and Investigation**

* + 1. The Bidder will be deemed for all purposes connected with the tender and the Contract to have carried out all researches, investigations and enquiries which can reasonably be carried out and to have satisfied itself as to the nature, extent, and character of the requirements of the Contract (in the context of and as it is described in the Specification), the extent of the materials and equipment which may be required and any other matter which may affect its Tender.
		2. The Supplier shall have no claim whatsoever against the Council in respect of such matters and in particular (but without limitation) neither the Council shall make any payments to the Supplier save as expressly provided for in the Contract and (save to the extent set out in the Contract) no compensation or remuneration shall otherwise be payable by any Council to the Supplier in respect of the scope of the Contract being different from that envisaged by the Supplier or otherwise. Information given in respect of current orders is given as a guide and the Council makes no warranty and accepts no liability as to the actual value or volume of orders to be placed with the Supplier.
	1. Completing the Form
		1. Failure to complete the form as instructed may result in your submission being rejected.
		2. Tenders must be submitted on this Invitation to Tender Document, in Word format (unless otherwise specified), which must be duly completed and signed where appropriate. These include the:

(a) Bidders Responses,

(b) Pricing Schedule (Excel format),

(c) Payment Details,

(d) Form of Tender,

(e) Collusive Tendering Certificate,

(f) Information Disclosure Form,

* + 1. When completing this document you may enlarge the answer boxes to ensure you have sufficient space to respond. **Please do not alter or amend the form in any other way**.
		2. The form must be completed even if your organisation has previously worked with the Council or submitted a Tender or Selection Questionnaire to Lincolnshire County Council– cross-referencing to previous submissions will not be sufficient.
		3. **Please answer every question as instructed to do so**. Do not assume that the officers evaluating the form will know about your organisation or the work that you do, and answer the questions as fully as possible within any given constraints.
		4. If the question does not apply to you please write N/A; if you don’t know the answer please write N/K. When posed with Yes / No questions please edit your answer as appropriate. All figures should be in full, i.e. £3,500,000, not £3.5 million and in GBP.
		5. The Council recognises that arrangements in relation to consortia and sub-contracting may be subject to future change. Bidders should therefore respond in light of arrangements currently envisaged. Please provide details of the proportion of any contract awarded under this Contract that the prospective partner proposes to subcontract.

**Variant Bids**

* + 1. No variant bids will be accepted.

**Signatures**

* + 1. Where required, the Invitation to Tender Document must be signed in accordance with the options below:

(a) where the Bidder is an individual, by that individual; OR

(b) where the Bidder is a partnership, by two duly authorised partners; OR

(c) where the Bidder is a limited company, by a director duly authorised for such purposes.

* + 1. You may submit electronic or typed signatures. However, should you be successful, you will be required to resign all declarations that form part of the contract with an original signature.

**Supporting Documents**

* + 1. In order to simplify this process, **you should not provide supporting documents**, for example, marketing literature **unless specifically requested to do** **so**. Instead, we will ask you to provide a statement regarding your approach to various aspects of the delivery of the contract. However, **the purchasing organisation may ask to see these documents at a later stage** so it is advisable that you ensure they can be made available upon request. You may also be asked to further clarify your answers or provide more details.
	1. Submitting the Form
		1. Tenders should be submitted electronically no later than **12:00 noon on 3rd May 2021** through the Pro-Contract Tender Portal which is a secure exchange module of the Pro-Contract e-sourcing suite. Submissions via the electronic tenderbox cannot be accessed or opened by the contracting authority until after the deadline has expired. No documents can be uploaded to the tenderbox after the deadline has expired; therefore there is no penalty for returning a submission early! It is strongly recommended that your submission is uploaded well before the deadline to ensure that failure of ICT/Servers/PC/laptop or similar does not result in your submission failing to be placed in the tenderbox.
		2. Any queries regarding this opportunity should be submitted electronically no later than **14:00 on 26th April 2021** through the Pro-Contract Tender Portal.
		3. The Bidder’s attention is specifically drawn to the date and time for receipt of tenders and **no submission after the closing date and time can be considered**.
	2. Rejection of the Tender
		1. Any Tender submitted by a Supplier in respect of which the Bidder:

(a) fixes and adjusts prices and rates shown in its tender by or in accordance with any agreement or arrangements with any other person or by reference to any other tender or communicates to any person other than the Officer mentioned in this tender the amount or approximate amount of the prices and rates shown in its tender except where such disclosure is made in confidence, in order to obtain information for the preparation of the tender documents or for the purposes of financing or insurance; or

(b) enters into any agreement with any other person that such other person shall refrain from submitting a tender or shall limit or restrict the prices to be shown by any other Bidder in its tender; or

(c) offers or agrees to pay or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having or causing or having caused to be done in relation to any other Supplier or any other person’s proposed Tender any act or omission; or

(d) in connection with the award of the Contract commits an offence under the Bribery Act 2010

(e) has directly or indirectly canvassed any member or official of the Council concerning the acceptance of any Tender or who has directly or indirectly obtained or attempted to obtain information from any such member of official concerning any other Supplier or tender submitted by any other Bidder;

(f) does not provide all the information required by the Council.

(g) fails to pass any of the mandatory Business Information requirements.

(h) includes proposed amendments or additions to the terms of the tender, conditions of contract and/or specification changes which shall be deemed a variant bid.

may be rejected by the Council provided always that such non-acceptance or rejection shall be without prejudice to any other civil remedies available to the Council or any criminal liability which such conduct by a Bidder may attract.

* 1. Acceptance of Tender
		1. Any acceptance of a Tender by the Council will be in writing and communicated to the Bidder following a standstill period of not less than 10 calendar days.
		2. Following the end of the standstill period Lincolnshire County Council will inform the successful Bidder of the acceptance of the offer by means of a formal letter accompanied by two copies of the contract document. The Bidder will be expected to sign and return the contract document to the Council who will duly sign and complete the contract and return one copy to the Supplier.
	2. Bidder’s Warranties
		1. In submitting a Tender the Bidder warrants and represents that:

(a) it has complied in all respects with the Conditions of Tender;

(b) all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Bidder or its employees in connection with, or arising out of the Tender are true, complete and accurate in all respects;

(c) it had made its own investigations and research, and has satisfied itself in respect of all matters relating to the Tender, the Specification and the Conditions of Contract and that it has not submitted the Tender and will not have entered into the Contract in reliance upon any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council;

(d) it has full power and authority to enter into the Contract and will if requested produce evidence of such to the Council;

(e) it is of sound financial standing and the Bidder and its partners, officers and employees are not aware of any circumstances (other than such circumstances as may be disclosed in the accounts or other financial statements of the Bidder which may adversely affect such financial standing in the future;

All Bidders shall keep their respective bids valid and open for acceptance by the Council until the expiry of 90 days from the last date for the receipt of tenders.

1. - Specification
	1. General Information
		1. The Customer is looking to procure a countywide contract for scheduled Maintenance Servicing (one 6 month and one annual Maintenance Service), Maintenance and Repair Work (including emergency/ad-hoc repair work) on our Household Waste Recycling Centre Compactors.

The Customer's main aims under this Contract are to:

* Minimise the downtime of the Compactors.
* Maximise the Compactor's operational function, capacity and efficiency.
* Ensure supply chains are managed effectively to enable the sourcing of parts to allow for the meeting of timescale for repairs.
* Ensure compliance with all health and safety law.
* Gain maximum social value advantage benefits from this contract.
	+ 1. The Supplier shall ensure that all repairs are completed and the Compactor is operational within two calendar days (on receipt of acceptable Lone Worker Policies) of diagnosis or at a time and date agreed by the Customer if the repair cannot be completed within two calendar days.
		2. The Customer's 10 Household Waste Recycling Centre's (Customer Sites) are at the following locations, the Compactor model numbers for each Customer Sites are detailed in Appendix Two.

| **Customer Sites** | **Address** | **Opening Hours** | **Number of Compactors**  |
| --- | --- | --- | --- |
| **Boston**  | Bittern Way, Boston, Lincolnshire, PE21 7RQ | Friday to TuesdayFrom 9am to 4pm | 6 x Thetford Traversing Compactors |
| **Bourne**  | South Fen Road, Bourne, Lincs, PE10 0DN | Friday to TuesdayFrom 9am to 4pm | 5 x Thetford Traversing Compactors |
| **Gainsborough** | Long Wood Rd, Gainsborough, DN21 1QB | Friday to TuesdayFrom 9am to 4pm | 4 x Thetford Traversing Compactors1 x Static compactor  |
| **Grantham** | Mowbeck way, Grantham, Lincs, NG31 7AH | Friday to TuesdayFrom 9am to 4pm | 5 x Thetford Traversing Compactors |
| **Lincoln** | Great Northern Terrace, Lincoln, Lincs, LN5 8LG | Friday to TuesdayFrom 8am to 5pm | 7 x Thetford Traversing Compactors |
| **Louth** | Bolingbroke Road, Louth, Lincs, LN11 0WA | Friday to TuesdayFrom 9am to 4pm | 6 x Thetford Traversing Compactors |
| **Market Rasen** | Gallamore Lane Industrial Estate, Lincs, LN8 3HA | Friday to TuesdayFrom 9am to 4pm | 5 x Thetford Traversing Compactors |
| **Skegness** | Warth lane, Skegness, Lincs, PE25 2JS | Friday to TuesdayFrom 9am to 4pm | 5 x Thetford Traversing Compactors |
| **Sleaford** | Pride Parkway, Sleaford, Lincs, NG34 8GL | Friday to TuesdayFrom 9am to 4pm | 5 x Thetford Traversing Compactors |
| **Spalding** | West Marsh Road, Spalding, Lincs, PE11 2BB | Friday to TuesdayFrom 8am to 5pm | 6 x Thetford Traversing Compactors1 x Static Super Short compactor  |

* + 1. The Customer Sites are open on Bank Holidays; however the Customer Sites are closed on the following dates 25th December, 26th December and 1st January. The Contract opening hours above and the amended opening hours in Appendix Six are subject to change, the Supplier will be notified giving 10 calendar days of any further amendments made to the opening hours.
		2. The Customer reserves the right increase or decrease the number of Customer Sites and/or the number of Compactors or the specification of the Compactors. During the Contract Period the Customer may procure and introduce different models of Compactors, as such these will fall under the remit of this Contract.
		3. The Customer also reserves the right to change the location of Customer Sites throughout the contract period.
		4. The Customer intends to construct a new HWRC within the Horncastle and Coningsby area, and a replacement HWRC at Skegness during the life of this Contract. These new HWRCs shall be included in this Contract, once they are operational. The Customer shall inform the Supplier of the date these sites are to be included within the Contract, once construction has started. Currently it is envisaged that initially these HWRCs shall only require emergency repairs being included, once the equipment's warranty has expired however some or all aspects of the repair and scheduled maintenance requirements may be required from the new Customer's Sites becoming operational. The Customer will confirm with the Supplier what level of service is required for any new sites once they have been constructed.
	1. Description of the Service Required
		1. The fundamental purpose of this Contract is for the Supplier to service, maintain and repair the above Compactors. The Supplier shall be required to provide:
* One 6 month Maintenance Service and one annual Maintenance Service for each of the Compactors in accordance with the maintenance schedule (see Appendix One) per year for the duration of the Contract.
* The repair of all defects to the Compactors including accidental damage.
* The provision of all required parts for maintenance and repair work.
* The disposal of all wastes and parts removed from the Compactors including but not limited to oils, fluids and other hazardous waste materials arising from the maintenance and repair of the Compactors in a compliant and lawful manner.
	+ 1. Details of each of the Compactors maintenance and repair histories for the past 12 months are available in Appendix Four Suppliers should use this information as a guide when determining prices.
		2. Maintenance and repair operations to the Compactors shall be carried out in compliance with the manufactures guidance, Specification and the Suppliers Method Statement.
	1. Scheduled Maintenance (6 month and annual Maintenance Services)
		1. Maintenance of the Compactors shall be coordinated and planned in agreement with the Customer in order to meet operational demands and minimise disruption to the Customer's service.
		2. The Supplier shall prepare and provide to the Customer a schedule for the Compactor Maintenance Services. These schedules shall be agreed and approved by the Customer before they are implemented. These schedules shall be issued for approval to the Customer 7 calendar days before the Service Commencement Date and thereafter 14 calendar days before the anniversary of the Contract. Each Compactors initial 6 monthly service must be completed within 6 months of the Service Commencement Date. Each subsequent Service (either annual or 6 monthly Maintenance Service) shall be completed not sooner than 5 months or more than 7 months after the last service on that compactor. The Last Scheduled Maintenance Service will be undertaken in January 2021 for all Compactors.
		3. The Supplier shall provide the Customer with an email reminder no later than 14 calendar days before the upcoming scheduled for both the 6 month and annual Maintenance Services.
		4. The Supplier shall arrive on the customer site with an electronic Compactor Maintenance Service Sheet – 6 monthly and annual (Appendix One) that shall detail the items to be checked and work to be carried out during the maintenance visit.
		5. The Compactor Maintenance Schedule shall be completed by the Supplier detailing all maintenance work undertaken on the Compactors. The Supplier shall provide a copy of the Compactor Maintenance Service Sheet to the Customer before leaving the Customer site in an electronic format. This shall act as a written record of the maintenance work carried out.
		6. If during the Course of a Compactor Maintenance Service should the Supplier discover additional work beyond that identified in the Compactor Maintenance Service Schedule (Appendix One) that needs to be carried out, the Supplier shall inform the Customer of this work as soon as is practical during the course of the Service. The Supplier shall not carry out this additional work until they have received instruction from the Customer to agree to carry out the work; this shall be done using the Compactor Defect Notice as outlined in Appendix Five.
		7. Any Compactor Maintenance Service work that cannot be completed on the day state in the Compactor Maintenance Service Schedule shall be carried out the next calendar day or at a time and date agreed with the Customer.
		8. The Supplier shall invoice the Customer for maintenance work carried out on the Compactors in accordance with the Pricing Schedule.
	2. Unscheduled/Emergency Repairs to Compactors
		1. The Customer shall report faults with the Compactors to the Supplier via a Compactor Defect Notice.
		2. For repairs and breakdowns the Supplier shall attend the Customer Site by the end of the next calendar day of receiving (via telephone) a Compactor Defect Notice.
		3. A Defect Notice shall be reported by the Customer to the Supplier via the telephone; the Customer shall inform the Supplier of the fault and the Customer Site name. The Supplier shall confirm their estimated time of arrival at the Customer Site during this telephone call. This telephone notification of a Defect Notice will be followed by an email from the Customer to the Supplier detailing in the information provided in the telephone call.
		4. On receipt of the Compactor Defect Notice the Supplier Shall:
* Send an email acknowledging receipt of the Compactor Defect Notice (Appendix Five) and confirming the estimated arrival time to the Customer Site within 2hrs of the Compactor Defect Notice being issued.
* Attend the Customer Site to diagnose the Defect by the end of the next calendar day of the Compactor Defect Notice being issued by the Customer. For the avoidance of doubt this count down starts at the time of the phone call reporting the defect. Therefore if a call was logged at 15:00 on the Tuesday for Grantham HWRC the Supplier would have until then end of Wednesday to respond.
* Attend the Customer Site equipped to diagnose the Defect.
	+ 1. The Supplier shall inspect the Compactors to diagnose the Defect; once identified the Supplier's diagnosis of the defect shall be reported to the Customer immediately using the Compactor Defect Notice, along with an estimation of how long the repair will take to carry out. The Supplier will return to the Customer Site the next calendar day or at a time and date agreed with the Customer to undertake the repair work identified in the Compactor Defect Notice.
		2. The Supplier shall record all Defects and work undertaken on the Compactors using the Compactor Defect Notice provide by the Customer. The Compactor Defect Notice will be used to support all invoices made to the Customer and in accordance with the Pricing Schedule.
	1. Parts
		1. All replacement parts are to be provided by the Supplier; this includes but is not limited to all service parts, all repair parts and consumables.
		2. The Supplier shall ensure that all parts provided are new and to the manufacture's specifications (as specified in the manufactures guidance) for the Compactors.
		3. The Supplier shall ensure that all parts provided meet all current European standards, and any future amendments and revisions of or replacements to these standards.
		4. The Supplier shall ensure that no parts are removed from any of the Compactors except in the course of a Compactor Maintenance Service and/or repair of the Compactors. Where parts are replaced in the course of a Compactor maintenance service and/or repair, the Supplier shall retain the replaced parts for 10 calendar days so that they may be inspected by the Customer. If any parts are not available for inspection within this 10 calendar day period, the Customer shall have the right to withhold payment for the parts and for all associated costs.
		5. In the event of any misdiagnosis of a Compactor Default the Supplier will be liable for all costs incurred by the Customer as a result of the misdiagnosis.
	2. General Supplier Obligations
		1. The Supplier shall be responsible for disposing of all waste materials arising from either Scheduled Maintenance or repair work in accordance with the Law.
		2. The Supplier shall use the Compactor Maintenance Service Sheets provided (See Appendix One) during the Compactor Maintenance Services to record works undertaken during the 6 monthly or Annual Compactor Maintenance Service.
		3. The Supplier shall use the Compactor Defect Notice (see Appendix Five) provided by the Customer for the purpose of recording all defects with the Compactors. These shall provide the basis for the recording of and completion of all work undertaken on the Compactors and subsequent invoice.
		4. The Supplier shall ensure that all Staff employed in the delivery of this service shall act in accordance with all site rules and regulations whether legally enforceable or not.
	3. Contract Management
		1. The Supplier will provide a Supplier's Representative for the duration of the Contract.
		2. The Supplier shall provide the Customer with the contact details which shall include telephone number and email address for the Supplier's Representative. The Supplier's Representative will be contactable 7 days a week between the hours of 08:00hrs – 16:00hrs.
		3. The Supplier's Representative shall attend in person or via video conferencing (i.e. Microsoft Teams) quarterly meetings with the Customer at the Customer's offices regarding the operation/management of the Contract and review performance.
		4. The Supplier shall also; given 3 calendar days written notice attend any ad hoc meetings called by the Customer regarding the operation of the Contract and/or in the event that the Customer is not satisfied with any aspect of the Suppliers work.
	4. Monthly Service Reports
		1. The Supplier shall, not more than 7 calendar days following the end of the calendar month, submit to the Customer a Monthly Service Report, in electronic format. The Monthly Service Report shall be in accordance with Appendix Three.
		2. Once the Customer is satisfied with the Monthly Service Report, not more than 10 calendar days following the receipt of the Monthly Service Report the Customer will instruct the Supplier to submit an invoice in accordance with the Payment Schedule.
	5. Health and safety
		1. The Supplier shall comply with all health and safety Law.
		2. The Supplier shall maintain accurate and up to date health and safety records and documentation in compliance with all legal requirements relating to activities to be undertaken for this Contract. These shall be available for inspection by the Customer.
		3. In addition to legislative compliance, the Supplier's Staff shall;
* Undergo any Customer sites induction training required by the Customer or their Agents.
* Wear personal protective equipment (PPE) when on Customer Sites this is to be provided by the Supplier. This shall consist of protective footwear with toe protection and mid sole protection, safety gloves and a high visibility vest or jacket worn as the outermost layer and/or any other PPE as specified in site induction training which may at any time be updated in accordance with the Customer's or their Agents Health and Safety policy, or any other PPE identified in the Supplier's health and safety policy and/or documents.
	+ 1. The Supplier shall report all accidents/ incidents occurring on the Customer Site to the Customer and their Agents for inclusion in the Customer Site's accident book.
		2. The Supplier shall leave the area in which they have been working in a clean and tidy condition, to the satisfaction of the Customer, after work has been carried out on the Compactor. Failure will result in the Customer having to engage a 3rd party to make the area clean and tidy. The Supplier shall pay all costs incurred by the Customer engaging a 3rd party to clear the site.
		3. The Supplier will be responsible for all damages to the Customer Sites caused by the Supplier. The Supplier shall pay the full costs incurred by the Customer for engaging a 3rd party to repair the damage caused to the Customer Sites by the Supplier.
		4. The Supplier will ensure all relevant safety measures are taken when working on the Customer Sites to ensure the safety of all staff and the general public.
		5. The Supplier must ensure that they provide to the Customer all relevant Risk Assessment and Method Statements (RAMS) for any work carried out on the Customer Site (i.e. hot works etc…).
		6. For any non-standard operations the Supplier must provide the Customer with a copy of the RAMS for the work being undertaken for prior to the works being carried out. This must be provided to the Customer electronically at least one calendar day prior to the works being carried out.
	1. Performance Monitoring
		1. The Supplier shall adhere to the Service Levels specified in Section 3b (Contract & Performance Management Arrangements).
	2. Contingency Planning
		1. The Supplier shall produce, maintain and implement in accordance with the Terms and Conditions Clause B13 a Contingency Plan detailing how the Supplier will manage unplanned events (such as mass staff illness/pandemics, Communications failure, adverse weather conditions, Fuel Shortages and supply chain problems etc…) which might affect any of the Services as described in this Specification.
		2. Payment for any contingency arrangements shall be at the Supplier's own cost. The Contingency Plan shall be reviewed on an annual basis by the Customer and the Supplier.
		3. No changes shall be made to the Contingency Plan except with the agreement of the Customer.
1. - Contract & Performance Management Arrangements
	1. General Information
		1. The Supplier shall meet all of the Customer's requirements as set out in the Specification and meet the requirements of the Contract in all respects.
		2. This Performance Management Framework shall apply in full from the Commencement Date and details the elements of the Services that shall be measured to monitor and to incentivise performance by means of application of Performance Deduction via Schedule 3 ( of the Terms and Conditions) Payment Mechanism for substandard performance.
		3. The Customer shall monitor the Supplier's performance of the Services in accordance with this Contract and shall notify the Supplier of any Service Failure or Critical Service Failure occurring during the provision of the Services.
		4. The Performance Management Framework shall be reviewed on an annual basis by the Customer and the Supplier with Service Levels being reviewed every six (6) Months. No changes shall be made to the Performance Management Framework except by agreement of both Parties.
	2. Performance Deductions
		1. The Customer shall inform the Supplier's Representative of the Service Failure or Critical Service Failure via Email, within five (5) calendar days of the Customer becoming aware of the Service Failure or Critical Service Failure and confirm what remedial action is required and Service Level Performance Deduction that shall apply, in accordance with the Contract.
		2. If a Service Failure as detailed in Table A occurs then, subject to the terms of this Performance Management Framework, the Customer shall be entitled to make the Performance Deduction by applying the appropriate Performance Deduction to the Service Charges without prejudice to any other remedies the Customer may have. Additionally, the Supplier shall undertake all relevant remedial action identified in the Table A below. If the Supplier does not complete the required remedial action within the timeframe specified below, the Service Failure automatically becomes a Critical Service Failure and shall be dealt with as such.
		3. If a Critical Service Failure as detailed in Table A occurs then the Customer shall be entitled to make the Performance Deduction by applying the appropriate Performance Deduction to the Service Charges without prejudice to any other remedies the Customer may have. The Customer may terminate this Contract in accordance with Clause H2.1 of the Terms and Conditions. However, the Customer may, at its absolute discretion, implement a Remediation Plan Process in accordance with Clause H7A of the Terms and Conditions.
		4. The Customer shall have up-to-date contact details for the Supplier's Representative or any temporary or permanent replacement including name, work, email address and mobile telephone numbers (including out of hours contact number). The Supplier's Representative shall be available to meet the Customer, or other such duly authorised person, at all reasonable times and shall provide such written reports as the Customer's Representative may reasonably require prior to such meetings or generally.
		5. The Customer may in its sole and absolute discretion grant relief from the application of Performance Deduction or their powers under the Contract, if it is satisfied that the reason for the Service Failure or Critical Service Failure was outside the reasonable control of the Supplier. To claim such relief evidence must be provided by the Supplier to the Customer for each event for which relief is sought. Such evidence must show that the Supplier was unable to mitigate the effects of the reason for the Service Failure or Critical Service Failure as the case may be. The Customer shall review the application for relief and determine if the event causing a Service Failure was or was not outside the reasonable control of the Supplier. The conclusion of the Customer shall be final. The Supplier must apply reasonable measures to mitigate problems/events which affect the delivery of the Service to prevent the occurrence or minimise the amount of Service Failures.

**Table A**

| **Service Level** | **Critical Service Failure** | **Service Failure** | **On Target** | **Accumulative £ Service Level Performance Deduction gained for each occurrence under the Service Level per month**  | **Remediation Action Required** |
| --- | --- | --- | --- | --- | --- |
| 1 | The Supplier shall ensure that all repairs are completed and the Compactor is operational within two calendar days (on receipt of acceptable Lone Worker Policies) of diagnosis or at a time and date agreed by the Customer if the repair cannot be completed within two calendar days. **Specification Item 3.1.2**  | The Supplier ensures that all repairs are completed and the compactor is operational after 3 calendar days of diagnosis or exceeding 2 calendar days after the time and date agreed with the Customer or If the Supplier fails to return to complete the repairs at all.  | The Supplier ensures that all repairs are completed and the compactor is operational between 2 to 3 calendar days of diagnosis or between 1 to 2 calendar days after the time and date agreed with the Customer. | The Supplier ensures that all repairs are completed and the compactor is operational within 2 calendar days of diagnosis or by the time and date agreed with the Customer.  | **SERVICE FAILURE****£82.00 per Occurrence**That the Supplier fails to ensure that all repairs are completed and the Compactor is operational between 2 to 3 calendar days of diagnosis or between 1 to 2 calendar days after the time and date agreed by the Customer. **CRITICAL FAILURE****£160.00 per Occurrence**That the Supplier fails to ensure that all repairs are completed and the Compactor is operational after 3 calendar days of diagnosis or exceeding 2 calendar days after the time and date agreed with the Customer.  | The Supplier shall also investigate and report back to the Customer the circumstances resulting in the failure Within 5 Working Days with their findings and outlining the measures they have implemented to prevent a repeat occurrence. |
| 2 | For repairs and breakdowns the Supplier shall attend the Customer Site by the end of the next calendar day of receiving (via telephone) a Defect Notice. **Item 3.4.2 of the Specification**   | The Supplier fails to attend the Customer Sites after the end of the second calendar day of being informed by the Customer of the Service Failure.   | The Supplier attends the Customer Sites between the end of the next calendar day to the end of the second calendar day of receiving (via telephone) a Defect Notice. | The Supplier attends the Customer Sites by the end of the next calendar day of receiving (via telephone) a Defect Notice.  | **SERVICE FAILURE****£82.00 per Occurrence**That the Supplier fails to attend the Customer Sites between the end of the next calendar day to the end of the second calendar day of receiving (via telephone) a Defect Notice.**CRITICAL FAILURE****£160.00 per Occurrence**That the Supplier fails to attend the Customer Sites after the end of the second calendar day of being informed by the Customer of the Serious Service Failure. | The Supplier shall also investigate and report back to the Customer the circumstances resulting in the failure Within 5 Working Days with their findings and outlining the measures they have implemented to prevent a repeat occurrence. |
| 3 | The Supplier shall, not more than 7 calendar days following the end of the calendar month, submit to the Customer a Monthly Service Report, in electronic format. **Item 3.8.1 of the Specification** |  | The Supplier fails to provide an electronic Monthly Service Report within 7 calendar days following the end of a calendar Month.  | The Supplier provides an electronic Monthly Service Report within 7 calendar days following the end of a calendar Month. | **£27.00 per occurrence** that the Supplier fails to provide the customer with the Monthly Service Report. The supplier should note that no payment will be made until the Monthly Service Report is provided by the Supplier.  | The Supplier shall provide the Customer with the Monthly Service Report by the end of the next Working Day of being informed of the Service Failure. |
| 4 | The Supplier shall leave the area in which they have been working in a clean and tidy condition, to the satisfaction of the Customer, after work has been carried out on the Customer's Compactor. **Item 3.9.5 of the Specification** |  | The Supplier fails to leave the area in which they have been working in a clean and tidy condition.  | The Supplier leaves the area in which they have been working in a clean and tidy condition, to the satisfaction of the Customer.  | **£37.00 per Occurrence**That the area in which the Supplier has been working is not clean and tidy condition. **In addition the Supplier shall pay all costs incurred by the Customer engaging a 3rd party to clear the site.**  | The Supplier shall pay all costs incurred by the Customer engaging a 3rd party to clear the site.  |
| 5 | The Supplier shall prepare and provide a schedule for the Compactors Maintenance Services. These schedules shall be agreed and approved by the Customer before they are implemented. These schedules shall be issued for approval to the Customer no later than 7 calendar days before the Service Commencement Date or 14 calendar days before the anniversary date this Contract. **Item 3.3.2 of the Specification**  |  | The Supplier fails to issue for approval to the Customer no later than 7 calendar days before the Commencement date or 14 calendar days before the anniversary date of this Contract.  | The Supplier issues for approval to the Customer no later than 7 calendar days before the Commencement Date or calendar 14 days before the anniversary date of this Contract. | **£ 40.00 per Occurrence** That the Supplier failstoissue for approval to the Customer no later than 7 calendar days before the Service Commencement Date or 14 calendar days before the anniversary date this Contract. | The Supplier shall provide the schedule for the Compactors Maintenance Services for approval by the end of the next Working Day of being informed of the Service failure. |
| 6 | Any Maintenance Service work that cannot be completed on the day of the Maintenance Service shall be carried out at a time and date agreed with the Customer. **Item 1.3.6 of the Specification**  |  |  The Supplier fails to return to the Customer Sites at the time and date agreed with the Customer to complete any Service Maintenance work. | The Supplier returns to the Customer Sites at the time and date agreed with the Customer to complete any Service Maintenance work. | **£ 116.00 per Occurrence**For failing to return to the Customer Sites at a time and date agreed with the Customer to complete any Service Maintenance Work.  | The Supplier shall return to the Customer Site by the end of the next calendar day of being informed of the Service Failure by the Customer.  |

**Calculation of Performance Deduction**

The **Performance Deduction (PD)** is the amount (£) deducted from the Supplier's invoice for the month in question.

The Performance Deduction shall be calculated on the basis of the following step-by-step formula;

1. **Number of occurrences a Service Level was triggered multiplied by the value of the Service Level Performance Deduction.**
2. **Add together** the **(£)** **Service Level Performance Deduction** for each Service Level **to give the total of the Performance Deduction to be made for the Month in question.**
3. **Subtract** the **Performance Deduction (PD)** **from the Supplier's invoice** for the Month in question.

**Working Example;**

The supplier triggered the following Service Levels;

1. **The Supplier shall, not more than 7 calendar days following the end of the calendar month, submit to the Customer a Monthly Service Report, in electronic format.**

The Supplier failed to provide the Monthly Service Report within 7 calendar days following the end of the calendar month (1 occasion): **£27.00**

Performance Deduction applied for each occurrence of the Service Failure is **£27.00**, therefore incurring **£27.00** **(£27.00 x 1 = £27.00).**

1. **The Supplier shall prepare a schedule for the Compactors Maintenance Services. These schedules shall be agreed and approved by the Customer before they are implemented. These schedules shall be issued for approval to the Customer no later than 7 calendar days before the Service Commencement Date or 14 calendar days before the anniversary date this Contract.**

The Supplier failed to issue for approval to the Customer no later than 7 calendar days before the Commencement Date or 14 calendar days before the anniversary date this Contract.

The Performance Deduction applied for this incident is **£40.00** per occurrence, therefore incurring **£40.00**, **(1x £40.00 = £40.00)**.

**C)** **For repairs and breakdowns the Supplier shall attend the Customer Site by the end of the next calendar day of receiving (via telephone) a Defect Notice.**

 On the 2nd of the month the Supplier failed to attend the Customer Site by the end of the next calendar day of receiving (via telephone) a Defect Notice but the Supplier does attend the Customer Sites between the end of the next calendar day to the end of the second calendar day of receiving (via telephone) a Defect Notice. Also on the 12th of the month the Supplier failed to attend the Customer Site by the end of the next calendar day of receiving (via telephone) a Defect Notice but again the Supplier does attend the Customer Sites between the end of the next calendar day to the end of the second calendar day of receiving (via telephone) a Defect Notice.

On the 2nd of the month the Supplier failed to attend the Customer Site by the end of the next calendar day of receiving (via telephone) a Defect Notice but the Supplier does attend the Customer Sites between the end of the next calendar day to the end of the second calendar day of receiving (via telephone) a Defect Notice. (1 occasion): **£82.00**

Also on the 12th of the month the Supplier failed to attend the Customer Site by the end of the next calendar day of receiving (via telephone) a Defect Notice but again the Supplier does attend the Customer Sites between the end of the next calendar day to the end of the second calendar day of receiving (via telephone) a Defect Notice. (1 occasion): **£82.00**

Performance Deduction applied for each occurrence of the Service Failure is **£82.00**, therefore incurring **£164.00** **(£82.00 x 2 = £164.00).**

The Performance Deductions for the Month are then added together **£27.00** (for failing to provide Monthly Service Report within 7 calendar days of the end of calendar month) **+** **£40.00** (schedules shall be issued for approval to the Customer no later than 7 calendar days before the Commencement Date or 14 calendar days before the anniversary date this Contract) + £164.00 (for failing to attend the Customer Sites by the end of the next calendar day of receiving (via telephone) a Defect Notice on 2 occasions)to give **£231.00** **(£27.00 + £40.00 + £164.00 = £231.00)**.

**£231.00** is then deducted from the Supplier's submitted invoice for the month as **Performance Deduction (PD).**

So if the Supplier submitted an invoice for the month of **£1,000** and incurred **£231.00** **Performance Deduction** the Customer would pay the Supplier **£769.00 (£1,000 - £231.00 = £769.00).**

1. Bidders Responses – Proposed WorkingMethods

*Note – You may adjust the size of the text boxes to suit your response.*

|  |
| --- |
| PART A – Company Details |
| A1 | Company Name:**NOTE**: This must be the name given previously in the Selection Questionnaire |  |

|  |  |  |
| --- | --- | --- |
| A2 | Contact name for enquiries about this ITT: |  |
| A3 | Job Title: |  |
| A4 | Telephone number: |  |
| A5 | E-mail address: |  |

Bidders are required to respond to the questions below. You may expand the sections provided or provide your responses on clearly cross referenced sheets. Please make sure that where you choose to cross reference, the responses are all submitted in a SINGLE WORD FILE so that they may be printed off together.

Please note **you do not need to provide supporting documents and policies**, unless specifically requested to do so.

|  |  |
| --- | --- |
|  | **PART C – Proposed Working Methods** |
|  | Bidders are required to respond to the questions below to explain how your organisation proposes to deliver the services called for in the Specification (Section 3).You may expand the areas provided. Please note that a maximum word count has been assigned for responses to some of the questions. Where a maximum word limit has been set, any additional words that exceed this limit will be deleted and will not form part of the evaluation.Please answer all the questions and try to be concise in your response, making all responses relevant to the questions being asked. Note that appendices should not be included or referred to in your response unless specifically indicated and therefore may not be considered. Please refer to Section 1 of this document as a reminder of the weightings for the proposed working methods. Questions may also have an assigned relative importance weighting / percentage to reflect its significance within the overall evaluation. Where this is the case the weighting / percentage is shown alongside each question. |
| Q No |  |
| **1** | **12%** | **Attendance to Customer Sites for unscheduled repairs (Specification Item 3.4.4)** |
| Question: Please describe what measures you will put in place to ensure you will be able to attend the Customer Site equipped to diagnose a defect by the end of the next calendar day of receiving (via telephone) a Defect Notice as per Specification item 3.4.4. Please also explain how you will deliver this service and ensure your other business commitments will not impede on your ability to deliver this contract. **Max 1000 words*****(weighting divided evenly between all part of this question)*** |
| Answer: |
| **2** | **5%** | **Disaster recovery and contingency plan (Specification Item 3.11.1)** |
| Question: The Customer considers the following elements as key to the service ; 1. Minimising the compactor downtime
2. the Supplier being able to attend the Customer Site equipped to diagnose the defect within 24hrs of receiving (via telephone) a Defect Notice
3. All repairs are completed and the Compactor is operational within 2 calendar days of diagnosis

Please detail how your disaster and business contingency plan will enable you to ensure the uninterrupted delivery of these elements in the face of unplanned events such as; 1. Mass staff illness/Pandemics,
2. Communications failure with the Customer to ensure the uninterrupted delivery of the Services over the Contract Period.
3. Adverse weather conditions
4. Fuel Shortages
5. Supply chain problems

***Max 2000 words******(weighting divided evenly between all part of this question)*** |
| Answer:  |
| **3** | **14%** | **Compactor Downtime and repairs (Specification items 3.1.2 & 3.1.1)** |
| Question:Please explain how you will ensure that:1. All repairs are completed and the Compactor is operational within 2 days of diagnosis as per specification Item 3.1.2.
2. Supply chains are managed effectively to enable the sourcing of parts to allow for the meeting of timescale for repairs as per specification item 3.1.2.
3. The downtime of the Compactors is minimised as per specification item 3.1.1.

***Max 2000 words******weighting divided evenly between all part of this question*** |
| Answer: |
| **4** | **4%** | **Compactor Maintenance Services (Specification item 3.3.2)** |
| Question:Please provide details of how you will ensure that:* + - 1. The schedule for the Compactor Maintenance services is prepared and approved by the Customer as per the timescales outlined in Specification Item 3.3.2; please also include details of how this will be presented to the Customer.
			2. Any Maintenance Service work that cannot be completed on the day of the Maintenance Service shall be carried out the next calendar day or at a time and date agreed with the Customer.

***Max 1500 words*** ***weighting divided evenly between all part of this question*** |
|  |  | Answer: |
| **5** | **10%** | **Service Commencement date and Milestones**  |
| Question: Please detail how you will ensure that you will be operationally ready by the Service Commencement date by providing a programme of milestones that capture the key stages/processes.***1500 Words Maximum*** |
| Answer:  |
| **6** | **13%** | **Health and Safety (Specification items 3.9.7, 3.9.8, 3.9.9 & 3.1.2)** |
| Question:Please describe your methods and processes for managing all health and safety aspects of the Provision of this Service. Your response should include but is not limited to the following;1. Safety measures on site to ensure the safety of your staff, site staff and members of the public (Specification item 3.9.7)
2. Your process for ensuring work is carried out in accordance with supplied RAMS (Specification item 3.9.8)
3. Your process for producing RAMS for non-standard operations (Specification item 3.9.9)
4. Your procedures for Lone Working (specification item 3.1.2)

**Max 2000 Words*****(Appendices are allowed)*** |
| Answer: |
| **7** | **2%** | **Social Value Specification item 3.1.1)** |
| Question: Please outline how you will meet your obligations under the Social Value Act 2012 throughout the duration of this Contract; as per specification items 3.1.1.**Max 750 Words** |
| Answer: |

1. Pricing Schedule

Payment will be made on receipt of a valid invoice with payment terms of 30 days.

*Note – You may adjust the size of the following text boxes to suit your response.*

Prices are to be submitted in Pounds Sterling and exclusive of VAT. It should be assumed that all the requirements under the specification should be included in the costing proposal.

For the avoidance of doubt all costs associated with implementing the contract and subsequent individual Council requirements must be included within the prices quoted.

**The payment mechanism is shown in Schedule 3 Pricing Schedule of the Terms & Conditions.**

**Please complete Excel Spreadsheet Attached.**

****

1. Payment Details

The Council’s standard payment terms are 30 days from receipt of invoice.

Payment is by BACS

It is the policy of the Council to make payments to all suppliers direct into their bank account using the Bankers Automated Clearing Systems (BACS). Please complete your bank and relevant company details below. If your sales are factored to an Agency, please enclose a copy of the authorisation to make payment directly to them. The bank details will then be those of the factor and not yours.

*Note – You may adjust the size of the following text boxes to suit your response.*

|  |  |
| --- | --- |
| Bank Name |  |
| Bank Address and Post code |  |
| Account Name |  |
| Account Number  |  |
| Sort Code |  |

No invoices will be accepted from any Supplier without an official written order from us and the order number in full being quoted on all invoices.

**IMPORTANT**

Each separate invoice for [Insert name of purchasing organisation] should be addressed to:

**Lincolnshire County Council,**

**Serco Lincs Invoices,**

**PO Box 7811,**

**Corby,**

**NN17 9HF**

Invoices can be emailed to invoices@lincolnshire.gov.uk

When emailing invoices must be in PDF or TIF format.

**Failure to do so may lead to a delay in payment.**

1. Form of Tender

**Note: Refusal to give this declaration and undertaking means that your tender will not be considered.**

To **Lincolnshire County Council**

Having examined carefully and understood the, Conditions of Tender, Terms and Conditions of Contract, the Specification and all other documentation issued by the Council in connection with the **Repair and Maintenance of Household Waste Recycling Centre Compactors.**

We: ………………………………………………………………………………………

Of: ……………………………………………………………..…………………………

hereby offer to supply the Goods subject to the terms and conditions set out in such Conditions of Tender, Terms & Conditions of Contract, Specification and other documents (if any) at the prices and rates contained in the Pricing Schedule. We will keep our bid valid and open for acceptance by the Council until the expiry of 90 days from the last date for the receipt of tenders.

I/We understand you are not bound to accept the lowest or any tender you may receive and you will not pay any expenses incurred by us in connection with the preparation and submission of this tender.

I/We declare that to the best of my/our knowledge the responses submitted in this ITT are correct and a true representation. I/We understand that the information will be used in the process to assess my/our organisation’s ability to deliver the Council’s requirement. I/We understand that the Contracting Authority may reject this ITT if there is a failure to answer all relevant questions fully or if I provide false/misleading information

Unless and until a formal Contract is prepared and executed this Tender together with your written acceptance thereof shall constitute a binding Contract between us.

Signature ………………………………………………………

Position held ………………………………………………………

Name and Address of Supplier ………………………………………………………

 ………………………………………………………

 ………………………………………………………

Dated ………………………………………………………

*Note1 – Please note the above signature needs to be that of a Director or equivalent*

*Note2 – Electronic signatures or typed names are acceptable. In the event that your organisation is successful you will be required to resign this form with an original signature.*

1. Collusive Tendering Certificate

**Note: Refusal to give this declaration and undertaking means that your tender will not be considered.**

I/We declare that:

1. This is a bona fide tender, intended to be competitive, and that I/we have not fixed or adjusted the amount of the tender by or in accordance with any agreement or arrangement with any other person.

2. I/We have not done and I/we undertake that I/we will not do at any time before the hour and date specified for the return of this tender any of the following acts:

a communicating to a person other than the person calling for those tenders the amount or approximate amount of the proposed tender except where disclosure, in confidence, of the approximate amount of the tender was necessary to obtain premium quotations required for the preparation of the tender.

b entering into any agreement or arrangement with any other persons that they shall refrain from tendering or as to the amount of any tender to be submitted.

c offering or paying or giving or agreeing to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the sort described above. We acknowledge that if we, or anyone who acts on our behalf behaves improperly or commits an offence under the Prevention of Corruption Acts 1889-1916, the Council may cancel the contract and recover all costs and losses.

In this certificate, the word ‘person’ includes any persons or any body or associated, corporate or unincorporated, and ‘any agreement or arrangement’ includes any such transaction, formal or informal, and whether legally binding or not.

Signature ………………………………………………………

Position held ………………………………………………………

Name and Address of Supplier ………………………………………………………

 ………………………………………………………

 ………………………………………………………

Dated ………………………………………………………

*Note1 – Please note the above signature needs to be that of a Director or equivalent*

*Note2 – Electronic signatures or typed names are acceptable. In the event that your organisation is successful you will be required to resign this form with an original signature.*

1. Commercially Sensitive Information Disclosure Form

**Lincolnshire County Council**

**Freedom of Information Act 2000: Information Disclosure Form**

The Council is committed to the principle of open government and may disclose, upon request, information that it considers to be in the public interest to disclose.

Please state below any information that you specifically do not wish the Council to disclose together with any timescale relating to this non-disclosure e.g. for first 6 months, lifetime of the contract etc.

Please note that the council may still need to disclose such information if necessary to comply with its obligations under the Act.

I agree that information relating to this offer/contract may be disclosed, save for the information specified below which we consider to be commercially confidential:

Signature ………………………………………………………

Position held ………………………………………………………

Name and Address of Supplier ………………………………………………………

 ………………………………………………………

 ………………………………………………………

Dated ………………………………………………………

*Note – You may adjust the size of the text boxes to suit your response.*

|  |  |  |
| --- | --- | --- |
| Information not for Disclosure | Reason for Non-Disclosure | Timescale |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

*Note1 – Please note the above signature needs to be that of a Director or equivalent*

*Note2 – Electronic signatures or typed names are acceptable. In the event that your organisation is successful you will be required to resign this form with an original signature.*

1. Bidder Checklist

Bidders should ensure that they have completed the following sections before returning their responses:

|  |  |
| --- | --- |
| **SECTION HEADING** | **COMPLETED?** |
| **Section 5 – Bidder Responses – Proposed Working Methods** | **Yes / No** |
| **Section 6 – Pricing Schedule** | **Yes / No** |
| **Section 7 – Payment Details** | **Yes / No** |
| **Section 8 – Form of Tender** | **Yes / No** |
| **Section 9 – Collusive Tendering Certificate** | **Yes / No** |
| **Section 10 – Commercially Sensitive Information Disclosure Form** | **Yes / No** |
|  |  |

It is important that all sections are completed as failure to do so may result in your tender not being considered.

**Organisations who do not wish to offer a tender following receipt of this opportunity are requested to advise the Council’s named contact as soon as possible.**

1. - Terms and Conditions

|  |  |  |
| --- | --- | --- |
|  | **DATED**  | **2021** |
|  |  |  |
|  | **Lincolnshire County Council** | **(1)** |
|  | and |  |
|  | **[THE SUPPLIER]** | **(2)** |

|  |  |  |
| --- | --- | --- |
|  | **CONTRACT** relating to the supply of services in respect of the repair and maintenance of compactors at Household Waste Recycling Centres in Lincolnshire |  |

****

****

**Legal Services Lincolnshire**

**County Offices**

**Newland**

**LN1 1YL**

**Contents**

**General Provisions**

A1 Definitions and Interpretation

A2 Contract Period and Extension

A3 Supplier’s Status

A4 Customer’s Obligations

A5 Notices

A6 Mistakes in Information

A7 Conflicts of Interest

A8 Volumes

**Supply of Services**

B1 The Services

B2 Provision and Removal of Equipment

B2A Additional Repair Work Arising Out of Compactor Maintenance Services

B2B Unscheduled/Emergency Repairs

B2C Replacement Parts

B3 Manner of Carrying Out the Services

B4 Key Personnel

B5 Supplier’s Staff

B6 Inspection of Premises

B7 Access to Customer Premises

B8 Not Used

B9 Offers of Employment

B10 TUPE and Pensions

B11 Best Value

B12 Service Improvement

B13 Business Continuity

**Payment and Service Charges**

C1 Service Charges

C2 Payment and VAT

C3 Recovery of Sums Due

C4 Indexation of Service Charges

C5 Performance Management

C6 Contract Management

**Statutory Obligations and Regulations**

D1 Prohibited Acts and Prevention of Bribery

D2 Anti-Discrimination

D3 The Contracts (Rights of Third Parties) Act 1999

D4 Environmental Requirements

D5 Health and Safety

D6 Safeguarding

**Protection of Information**

E1 Data Protection Act

E2 Confidential Information

E3 Transparency and Freedom of Information

E4 Publicity, Media and Official Enquiries

E5 Security

E6 Intellectual Property Rights

E7 Audit

E8 Exceptional Audits

E9 Audit Costs

E10 Not Used

E11 Records and Open Book Accounting

**Control of the Contract**

F1 Transfer and Sub-Contracting

F2 Waiver

F3 Change Control Procedure

F4 Severability

F5 Remedies in the Event of Inadequate Performance

F6 Remedies Cumulative

F7 Financial Assurance

F8 Entire Agreement

F9 Counterparts

**Liabilities**

G1 Liability, Indemnity and Insurance

G2 Warranties and Representations

**Default, Disruption and Termination and Suspension**

H1 Termination on Insolvency and Change of Control

H2 Termination on Default

H3 Break

H4 Consequences of Expiry or Termination

H5 Recovery upon Termination

H6 Disruption

H7 Remediation Plan Process

H7A Remediation Plan in the Event of a Critical Service Failure

H8 Suspension and Consequences of Suspension

H9 Force Majeure

**Disputes and Law**

I1 Governing Law and Jurisdiction

I2 Dispute Resolution

**SCHEDULES**

Schedule 1: Specification

Schedule 2: Supplier’s Service Delivery Plan

Schedule 3: Payment Mechanism

Schedule 4: Performance Monitoring

Schedule 5: Key Personnel

Schedule 6: Disaster Recovery and Business Continuity Plan

Schedule 7: Exit Strategy**THIS AGREEMENT** is made the day of  **2021**

**BETWEEN**

(1) **LINCOLNSHIRE COUNTY COUNCIL** of County Offices, Newland, Lincoln, LN1 1YL (the “Customer”)

and

(2) **[INSERT NAME OF SUPPLIER]** [**Registered Company Number:** ] [whose registered office is situated at [ ] (the “Supplier”)

**WHEREAS**

The Customer requires the provision of regular and ad-hoc repair and maintenance services to compactors at Household Waste Recycling Centres in Lincolnshire and the Supplier has agreed to provide the same on the terms and conditions set out below

**IT IS HEREBY AGREED** as follows:

**GENERAL PROVISIONS**

**A1 DEFINITIONS AND INTERPRETATION**

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

**Additional Work** means any additional repair work identified during the provision of Compactor Maintenance Services to a Compactor.

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

**Approval** means the prior written consent of the Customer.

**Assets** means any moveable property such as furniture, IT equipment and any other tangible item provided by the Customer for use by the Supplier in providing the Services.

**Best Value** means arrangements to secure continuous improvement in the way the Customer’s functions are exercised having regard to a combination of economy, efficiency and effectiveness.

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

**Change** means any variation to this Contract including to any of the Services and Service Levels.

**Change Control Procedure** means the procedure for changing this Contract as set out in Clause F3.

**Change of Control** means:

1. any sale, transfer or disposal of any legal, beneficial or equitable interest in a majority or all of the shares in the Supplier (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or

(b) any other arrangements that have or may have or which result in the same effect as paragraph (a).

**Commencement Date** means the 1st July 2021

**Commercial Waste** has the meaning given in section 75 (7) of the Environmental protection Act 1990 ("EPA")

**Commercially Sensitive Information** means any Party's Information that:

(a) if disclosed, could prejudice the other Party's commercial interests and/or

(b) constitutes a trade secret.

**Compactor** means the Thetford compactors at each of the Customer Sites as set out within the Specification or added or removed by the Customer in accordance with this Contract.

**Compactor Defect Notice** means the notice issued by the Customer to the Supplier in accordance with this Contract notifying the Supplier of a fault with a Compactor in the form set out within the Specification.

**Compactor Maintenance Service Commencement Date** means the date on which the Compactor Maintenance Dates are agreed between the Parties, being no later than thirty (30) days after the Commencement Date.

**Compactor Maintenance Dates** means the dates on which the Supplier shall undertake the Compactor Maintenance Services to the relevant Compactors as agreed in accordance with this Contract and as set out within the relevant Compactor maintenance Service Schedule.

**Compactor Maintenance Service** means the regular 6 monthly and annual maintenance services undertaken to the Compactors by the Supplier, including requirements set out in the applicable Compactor Maintenance Service Schedules.

**Compactor Maintenance Service Schedule** means a schedule setting out pre-agreed dates which the Supplier shall undertake the Compactor Maintenance Services for the Contract Year in question.

**Compactor Maintenance Service Sheets** means the itemised list of requirements for the Compactor Maintenance Service to the Compactors in the form set out within the Specification

**Confidential Information** means 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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data.

**Consents means:**

(i) any permission, consent, approval, certificate, permit, licence, statutory agreement, authorisation, exception or declaration required by Law for or in connection with the performance of Services; and/or

(ii) any necessary consent or agreement from any third party needed either for the performance of the Supplier’s obligations under this Contract or for the provision by the Supplier of the Services in accordance with this Contract.

 **Contract** means this written agreement between the Customer and the Supplier consisting of these clauses and the attached Schedules.

 **Contracting Authority** means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

 **Contract Period** means the period from the Commencement Date to:

(a) the date of expiry of the Initial Contract Period, or

(b) following an extension pursuant to Clause A2.2, the date of expiry of the extended period,

or such earlier date of termination of the Contract in accordance with the Law or the provisions of this Contract.

 **Contract Year** means a period of twelve (12) Months commencing on the Commencement Date and/or each anniversary of the Commencement Date.

**Critical Service Failure** means a failure to achieve a Service Level which is identified in the table set out in Schedule 4 and identified as a critical service failure therein.

 **Crown** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

 **Customer’s Change Control Notice** means a notice served by the Customer on the Supplier requesting a Change in accordance with Clause F3.

 **Customer’s Contract Manager** means the person identified as such in Part 1 of Schedule 5 or any replacement person appointed by the Customer pursuant to Clause B4, being the person responsible for managing the delivery of the Services on behalf of the Customer.

**Customer Sites** means any premises made available from time to time to the Supplier by the Customer in connection with this Contract, including the Customer's Sites

 **Customer’s Representative** means the person identified as such in Part 1 of Schedule 5 or any replacement person appointed by the Customer pursuant to Clause B4, being the person responsible for managing the overall relationship with the Supplier.

**Customer Sites** means the Household Waste Recycling Centres owned by the Customer where the Compactors are located, within Lincolnshire as identified within the Specification

**Data Protection Legislation** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

**Default** means any breach of the obligations of the relevant Party or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Contract.

**Defect** Mean any error, fault or repair work needed on the Compactors that would trigger a Defect Notices to be raised.

 **Disaster** means an unplanned interruption of, or inaccessibility to, the Services provided by the Supplier.

**Disaster Recovery and Business Continuity Plan** means the business continuity and disaster recovery plan prepared pursuant to Schedule 6 as amended from time to time.

**DPA** means the Data Protection Act 2018.

 **Environmental Information Regulations** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**Equality Legislation** means the Equality Act 2010 and such other acts and legislation to ensure, among others equality of access to goods and services, promotion of good relations between groups in society, the provision of reasonable adjustments for people with disabilities and non-discrimination and equality in employment.

 **Equipment** means the Supplier’s equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under this Contract.

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

**Force Majeure Event** means any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Staff or any other failure in the Supplier’s or a Sub-Contractor’s supply chain.

**Force Majeure Notice** means a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event.

**Formal Warning Notice** means a notice served in accordance with Clause H2.2.

**Fraud** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Customer.

 **GDPR** means the General Data Protection Regulation (*Regulation (EU) 2016/679)*.

 **Good Industry Practice** means standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider, manager, operator or other person (as the case may be) engaged in a similar type of undertaking under this Contract under the same or similar circumstances.

 **Incumbent Supplier** means any supplier providing any service that constitutes or that shall constitute part of the Services immediately before the Transfer Date and Commencement Date of this Contract.

 **Information** has the meaning given under section 84 of the FOIA and includes Personal data as defined under Data Protection Legislation.

**Initial Contract Period** means the period from the Commencement Date to the date of expiry set out in Clause A2 (Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

 **Intellectual Property Rights** means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

 **Key Personnel** means those persons identified in Schedule 5 for the roles attributed to such personnel.

**Law** means any applicable law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply.

**LED** means the Law Enforcement Directive *(Directive (EU) 2016/680)*.

**Losses** means all demands, losses, charges, damages, costs and expenses and other liabilities (including, but not limited to, any professional and/or legal costs and disbursements).

 **Month** means calendar month.

 **Opening Hours** means any day that the Customer Sites are contracted to be open, as set out within the Specification, which are subject to change in accordance with the Specification.

**Party** means a party to this Contract and the term Parties shall be construed accordingly.

**Pensions Direction** means the Best Value Authorities Staff Transfers (Pensions) Direction 2007.

**Performance Deduction** means any deduction to the Service Charges calculated in accordance with Schedule 3.

**Performance Management Framework** means the performance monitoring system set out at Schedule 4.

**Persistent Breach** means a Default which has occurred on three or more separate occasions within a continuous period of three (3) Months.

**Personal Data** takes the meaning given in the GDPR.

 **Sites** means the location where the Services are to be supplied.

**Processing** takes the meaning given in the GDPR.

**Prohibited Act** each of the following constitutes a Prohibited Act:-

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage to:-

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

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

(c) committing any offence:-

(i) under the Bribery Act;

(ii) under legislation creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Customer; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Customer.

 **Public Contracts Regulations** means the regulations on public procurement which implements the European Union Directive 2014/24/EU into English law with effect from 26 February 2015.

 **Quality Standards** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification.

**Quarter** means one of the four periods of three months into which the financial year is divided (January until March, April until June, July until September, and October until December)

**Receipt** means the physical or electronic arrival of the invoice at the address of the Customer detailed in Schedule 3.

**Relevant Employees** means the employees of the Supplier (including Transferring Employees) who are wholly or mainly assigned to work in the provision of the Services and who are/shall be subject to a Relevant Transfer by virtue of the application of the TUPE Regulations.

**Relevant Transfer** means a transfer of employment to which the TUPE Regulations apply.

 **Remediation Notice** means a written notice given by the Customer to the Supplier pursuant to Clause H7.1 or Clause H7A.1 to initiate the Remediation Plan Process or Remediation Plan Process in the event of a Critical Service Failure, as applicable.

 **Remediation Plan** means the plan agreed in accordance with Clause H7 or H7A as applicable, for the resolution of a Default of the Supplier.

 **Remediation Plan Process** means the process for resolving certain Defaults or Critical Service Failures, where possible, of the Supplier as set out in Clause H7 and H7A.

**Replacement Contractor** means any third party service provider appointed by the Customer to supply any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of this Contract.

**Replacement Parts** means any service parts, repair parts and/or consumables supplied by the Supplier which are required to repair or maintain a Compactor and which is to be provided in accordance with this Contract.

**Request for Information** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**RPIX** means the RPIX index published by the Office of National Statistics (ONS)"RPI all items excluding mortgage interest payments (PRIX): Jan 1987=100

<https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/chmk/mm23>

**Schedule** means a schedule attached to, and forming part of, this Contract.

**Services** means the services to be supplied by the Supplier, including but not limited to Additional Work, Unscheduled/Emergency Repairs and Compactor Maintenance Services, as specified and detailed in the Specification, Compactor Maintenance Service Schedules, applicable Compactor Defect Notice and the Service Delivery Plan.

 **Service Charges** means the charges levied by the Supplier for the Services in accordance with the tariffs, scales, charges, invoicing methods and terms of payment as set out in this Contract including Schedule 3.

**Service Delivery Plan** means the details for delivery of the Services provided by the Supplier as set out at Schedule 2.

**Service Failure** means a failure by the Supplier to deliver any part of the Services in accordance with the Service Levels.

**Service Levels** means the levels to which the Services are to be performed as set out in Schedule 4.

**Service Report** means the Monthly electronic report produced by the Supplier and provide to the Customer's Representative no more than 7 working days after the end of each Month, in accordance with the Specification.

**Site Management Company** means the entity who is contracted by the Customer to manage and operate one of the Customer's Site on a day to day basis.

**Specification** means the description of the Services to be supplied under this Contract as set out in Schedule 1.

**Staff** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract.

 **Sub-Contract** means any contract or agreement, or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier 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** means the third parties that enter into a Sub-Contract with the Supplier.

 **Supplier** means the person, firm or company with whom the Customer enters into this Contract including the Supplier's Staff, agents and contractors and each Sub-Contractor.

 **Supplier Change Control Notice** means a notice served by the Supplier on the Customer requesting a Change in accordance with Clause F3.

 **Supplier’s Contract Manager** means the person identified as such in Part 2 of Schedule 5 or any replacement person appointed by the Supplier pursuant to Clause B4, being the person responsible for managing the delivery of the Services on behalf of the Supplier.

 **Supplier’s Representative** means the person identified as such in part 2 of Schedule 5 or any replacement person appointed by the Supplier pursuant to Clause B4, as the person responsible for managing the Supplier’s overall relationship with the Customer.

**Tender** means the document(s) submitted by the Supplier to the Customer in response to the Customer’s invitation to suppliers for formal offers to supply it with the Services.

**Transfer Date** means the date the Transferring Employee is transferred to the employment of the Supplier from the Incumbent Supplier.

**Transferring Employees** means employees of the Incumbent Supplier who are subject of a Relevant Transfer to the Supplier by virtue of the application of the TUPE Regulations, as amended.

**Transferring Original Employee** means a former employee of the Customer whose contract of employment, by virtue of the application of the TUPE Regulations, becomes a contract of employment with the Supplier and who meets the definition of a Transferring Original Employee under the Pensions Direction.

**TUPE Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**Unscheduled/Emergency Repairs** means repair works required to Compactors which arise outside of Compactor Maintenance Services and as notified by the Customer to the Supplier.

**VAT** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**Working Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

(a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;

(b) words importing the masculine include the feminine and the neuter;

(c) reference to Clauses and Schedules are to the clauses and Schedules of this Contract; references to paragraphs are to paragraphs of the relevant Schedule;

(d) the Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract and any reference to the Contract includes the Schedules;

(e) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

(f) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

(g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

(h) headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

(i) Where there is any conflict or inconsistency between the provisions of this Contract such conflict or inconsistency shall be resolved according to the following order of priority:-

(i) the clauses of this Contract;

(ii) Schedule 1;

(iii) the remaining Schedules to this Contract other than Schedule 2; and

(iv) Schedule 2 to this Contract.

**A2 CONTRACT PERIOD AND EXTENSION**

 A2.1 This Contract shall take effect on the Commencement Date and shall expire automatically on 31st June 2023, unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated, or extended under Clause A2.2.

A2.2 Subject to Clause C4 (Price adjustment on extension of the Initial Contract Period), the Customer may, by giving written notice to the Supplier not less than six (6) Month(s) prior to the last day of the Initial Contract Period, extend this Contract on the same terms for a further two periods of 12 Months, up to a maximum of 24 Months in total. The provisions of this Contract shall apply (subject to any variation or adjustment to the Service Charges pursuant to Clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

**A3 SUPPLIER’S STATUS**

A3.1 At all times during the Contract Period the Supplier shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract.

**A4 CUSTOMER’S OBLIGATIONS**

A4.1 Save as otherwise expressly provided, the obligations of the Customer under this Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under this Contract (howsoever arising) on the part of the Customer to the Supplier.

**A5 NOTICES**

A5.1Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by electronic mail (confirmed by letter), or by letter (delivered by hand, first class post, recorded delivery or special delivery). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given on the same Working Day if delivered by hand, two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail provided such notice is served no later than 1pm on any Working Day, otherwise such notice shall be deemed served the following Working Day, or sooner where the other Party acknowledges receipt of such letters or item of electronic mail. Such letters and electronic mail shall be addressed to the other Party in the manner referred to in Clause A5.3.

A5.3 For the purposes of Clause A5.2, the address of each Party shall be:-

(a) For the Customer:

Mr Mike Reed

Environmental Services

Lincolnshire County Council

Tel: 01522 552867 / 07795 441090

Email: Mike.Reed@lincolnshire.gov.uk

(b) For the Supplier:

[ ]

[Address: ]

[ ]

For the attention of:

Tel:

Email:

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

**A6 MISTAKES IN INFORMATION**

A6.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein except where such discrepancies, errors or omissions originate from documentation supplied by the Customer.

.

**A7 CONFLICTS OF INTEREST**

A7.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of the Supplier’s Staff are placed in a position where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Contract. The Supplier shall disclose to the Customer full particulars of any such conflict of interest which may arise.

A7.2 The Customer reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the financial or personal interests of the Supplier and the duties owed to the Customer under the provisions of this Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

**A8 VOLUMES**

A8.1 The Supplier acknowledges and has submitted its Tender on the understanding that no guarantee is given by the Customer in respect of levels or values of Services referred to in the Schedules which are indicative only and shall not be binding on the Customer.

**SUPPLY OF SERVICES**

1. **B1 THE SERVICES**

B1.1 Upon or within seven (7) days of the Commencement Date, the Parties, acting reasonably shall agree the Compactor Maintenance Service Commencement Date.

B1.2 No later than seven (7) days prior to the agreed Compactor Maintenance Service Commencement Date, the Supplier shall propose the Compactor Maintenance Service Schedule in relation to the initial twelve (12) Month period from the Compactor Maintenance Service Commencement Date, to the Customer, in accordance with the Specification. The Customer shall, acting reasonably, discuss and agree the same with the Supplier. Once agreed, the Compactor Maintenance Services to be undertaken in the to the initial twelve (12) Month period from the Compactor Maintenance Service Commencement Date shall be undertaken in accordance with the agreed Compactor Maintenance Service Schedule.

B1.3 No later than fourteen (14) days before each anniversary of the Compactor Maintenance Service Commencement Date, the Supplier shall provide a Compactor maintenance Service Schedule for the following twelve Month period to the Customer and the Parties shall undertake the process set out in Clause B1.2 in respect of agreeing the same. Following agreement, the Supplier shall undertake the Compactor Maintenance Services in accordance with the agreed Compactor Maintenance Service Schedule for the relevant period.

B1.4 The Supplier shall supply the Services during the Contract Period in accordance with the Customer’s requirements as set out in the Specification, the provisions of this Contract, the relevant Compactor Maintenance Dates, the Compactor Maintenance Service Schedules for the relevant type of Compactor, applicable Compactor Defect Notice and the Service Delivery Plan in consideration of the payment of the Service Charges.

B1.5 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of this Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Customer, the Supplier shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Contract within such reasonable time as may be specified by the Customer.

B1.6 Timely supply of the Services shall be of the essence of this Contract, including in relation to commencing the supply of the Services within the Compactor Maintenance Dates or any other time or specified date otherwise agreed.

**B2 PROVISION AND REMOVAL OF EQUIPMENT**

B2.1 The Supplier shall provide and maintain all the Equipment necessary for the supply of the Services and shall ensure that it has any necessary Equipment required when attending any of the Customer Sites.

B2.2 The Supplier shall not deliver any Equipment to the Customer Sites without obtaining prior Approval.

B2.3 All Equipment brought onto the Sites and any Customer Sites shall be at the Supplier’s own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Customer’s Default. The Supplier shall provide for the haulage or carriage thereof to the Sites and any Customer Sites and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Site and any Customer Sites shall remain under the ownership of the Supplier.

B2.4 The Supplier shall maintain all items of Equipment in a safe, serviceable and clean condition.

B2.5 The Supplier shall, at the Customer’s written request, at its own expense and as soon as reasonably practicable:-

(a) remove from the Site or Customer Sites any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not required or sufficient to complete the relevant Services in accordance with this Contract; and

(b) replace such item with a suitable substitute item of Equipment as required in order to complete the relevant Services.

B2.6 On completion of any part of the Services the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the relevant Services and shall leave the Customer Sites (as applicable) in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Customer Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

**B2A ADDITIONAL REPAIR WORK ARISING OUT OF COMPACTOR MAINTENANCE SERVICE**

B2A.1 If, during the course of any Compactor Maintenance Service, the Supplier identifies that Additional Repair Work is required on a Compactor beyond such maintenance that either needs to be carried out immediately, or in the near future, the Supplier shall inform the Customer's of this work as soon as is practical during the course of the Compactor Maintenance Service.

B2A.2 The Supplier shall not carry out any such Additional Repair Work until they have received instruction from the relevant Customer's to do so. Should the Customer decide to instruct the Supplier to carry out such additional work, this shall be done using a Compactor Defect Notice as soon as reasonably possible. If the Customer decides not to have the additional work carried it out, it shall notify the Supplier accordingly.

**B2B UNSCHEDULED/EMERGENCY REPAIRS**

B2B.1 The Customer shall notify the Supplier of any faults which require Unscheduled/Emergency Repairs by issuing a Compactor Defect Notice in accordance with the Specification.

B2B.2 The Supplier shall respond to the Customer and undertake such Unscheduled/Emergency Repairs in accordance with the timescales and requirements of the Specification and this Contract.

**B2C.1 REPLACEMENT PARTS**

B2C.1 If, during the provision of the Services, it is identified that a Replacement Part is required, the Supplier shall ensure that such Replacement Part is:

 B2C.1.1 in accordance with the Specification, where applicable;

 B2C1.2 fit for their intended purposes;

 B2C.1.3 brand new and not a used part;

 B2C.1.4 in accordance with all current standards relating to such Replacement

 Parts, including but not limited to any BSI standard, UL standard or applicable or replacement EU standards and guidelines

 B2C.1.5 in accordance with the relevant Manufacturer's Instructions,

 B2C.1.6 In accordance with any specification and any manufacturer's guidance for the Customer's Plant on which they will be applied.

B2C.2 The Supplier shall ensure that any parts of a Compactor which is to be replaced by any such Replacement Parts are retained in a safe and suitable manner and in accordance with the Specification.

**B3 MANNER OF CARRYING OUT THE SERVICES**

B3.1 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Supplier shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and in any event, the Supplier shall perform its obligations under this Contract in accordance with the Law and Good Industry Practice.

B3.2 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B3.3 In the event that any of the Compactors is under any warranty from its manufacturer the Supplier shall ensure that the Services provided to the relevant Compactor shall not invalidate such manufacturer's warranty (save for the frequency of which any such Compactor Maintenance Services are to be taken to any Compactor) and shall liaise with the relevant manufacturer's warranty provider, details of which the Customer shall reasonably provide upon request, to ensure that the Services are undertaken in compliance with the same.

B3.4 The Supplier shall ensure that all Services are undertaken in a safe manner which is compliant to UK Government guidance and Law relating to the Covid-19 pandemic.

**B4 KEY PERSONNEL**

B4.1 Each Party shall appoint the persons named as such in Schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those individuals who are identified by each Party as being key to the success of the delivery and operation of the Services and who shall be retained on the delivery and operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective Party on matters for which they are expressed to be responsible.

B4.2 The Supplier acknowledges that the Supplier’s Key Personnel are essential to the proper provision of the Services to the Customer and shall ensure that the Supplier's Representative is contactable seven (7) days a week between the hours of 8.00am and 4.00pm.

B4.3 The Supplier’s Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

B4.4 The Supplier shall ensure that the role of each of its Key Personnel is not vacant for more than ten (10) Working Days. Any replacement shall be as, or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Supplier's Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier becoming aware of the role becoming vacant.

B4.5 The Customer shall not unreasonably withhold its agreement under Clauses B4.3 or B4.4. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on this Contract which could be caused by a change in the Supplier’s Key Personnel.

B4.6 The Customer may require the Supplier to remove or procure the removal of any of the Supplier’s Key Personnel whom the Customer considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on delivery or management of the delivery of Services.

B4.7 If the Supplier replaces the Key Personnel as a consequence of this Clause B4, the cost of effecting such replacement shall be borne by the Supplier.

B4.8 The Customer shall notify the Supplier within ten (10) Working Days upon any Customer Representative being released from their duties under this Contract and details of any replacement Customer Representative, this may include such temporary substitution of a Customer Representative.

**B5 SUPPLIER’S STAFF**

B5.1 At all times, the Supplier shall ensure that:-

1. each of the Staff is suitably qualified, adequately trained (including any specialist based training that is required for the proper delivery of the Services) and capable of providing the Services in respect of which they are engaged;
2. there is an adequate number of Staff to provide the Services properly;
3. where applicable, Staff are registered with the appropriate professional regulatory body;
4. all of the Staff comply with all of the Customer's policies as notified to it from time to time; and
5. all of the Staff comply with the Law, fully understand the nature of their duties and carry out their responsibilities in accordance with a general duty of care and safe methods of working; and
6. Staff are aware of and respect equality and human rights of colleagues.

B5.2 The Supplier shall notify its entire Staff about the Supplier’s obligations under the terms of this Contract and about any applicable Law.

B5.3 Upon receipt of a complaint against a member of Staff, the Customer may, to the extent reasonably necessary to protect the standards and reputation of the Customer, in consultation with the Supplier, request that the Supplier investigates the complaint and provides the Customer with all requested information in relation to this investigation, in accordance with the Supplier’s own internal policy and procedures and Good Industry Practice.

B5.4 In the event of industrial disputes or action by any of the Staff, it remains the Supplier’s responsibility to meet the requirements of this Contract. The Supplier shall inform the Customer immediately of impending or actual industrial disputes or action, which may affect the Supplier’s ability to deliver the Services and of the Supplier’s contingency plans for dealing with such disputes or action.

B5.5 The Supplier shall have in place systems for seeking and recording specialist professional advice and shall ensure that every member of Staff involved in the provision of the Services receives:-

1. proper and sufficient continuous professional and personal development, training and instruction; and
2. full and detailed appraisal (in terms of performance and on-going education and training),

each in accordance with Good Industry Practice and the standards of any applicable relevant professional body.

B5.6 Not Used

B5.7 The Supplier shall carry out Staff surveys in relation to the Services at intervals and in the form as agreed in writing from time to time.

B5.8 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, any Customer Sites:

1. any member of Staff; or
2. any person employed or engaged by the Supplier,

 whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

B5.9 At the Customer’s written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with this Contract to any Customer Sites, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Customer may reasonably request.

B5.10 The Staff, providing any Services within the boundaries of any Customer Sites, shall:

B5.10.1 comply with such rules, regulations and requirements (including those

 relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside any Customer Sites.

B5.10.2 undergo any site induction upon initial entry onto the Customer Sites, as and when required to do so by the Customer and/or the relevant Site Management Company;

B5.10.3 wear personal protective equipment as required to comply with Law and any rules, regulations and requirements as may be in force on the Customer Sites.

B5.11 If the Supplier fails to comply with Clause B5 and in the reasonable opinion of the Customer, such failure may be prejudicial to the interests of the Customer, then the Customer may terminate this Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

B5.12 The decision of the Customer as to whether any person is to be refused access to any Customer Sites and as to whether the Supplier has failed to comply with Clause B5 shall be final and conclusive.

B5.13 The Supplier shall replace any of the Staff who the Customer reasonably determines have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Staff for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services at no additional cost to the Customer.

B5.14 The Supplier shall maintain up-to-date personnel records on the Staff engaged in the provision of the Services and shall provide information to the Customer as the Customer reasonably requests on the Staff. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the Data Protection Legislation.

B5.15 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its Staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

**B6 INSPECTION OF CUSTOMER SITES**

B6.1 Save as the Customer may otherwise direct, the Supplier is deemed to have inspected the Customer Sites before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

**B7 ACCESS TO CUSTOMER SITES**

B7.1 The Customer shall provide access to any of the Customer Sites to the Supplier for the provision of the Services. The Supplier shall only have access for the provision of the Services and shall vacate the same on completion for the relevant Services undertaken at the Customer Sites.

B7.2 The Supplier shall limit access to the Customer Sites to such Staff as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with the relevant Site Management Company and any such other persons working concurrently on the Customer Sites as the Customer may reasonably request.

B7.3 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of the Customer Sites as determined by the Customer and/or the relevant Site Management Company, and the Supplier shall pay for the cost of making good any damage caused by the Supplier other than fair wear and tear and indemnify the Customer against all Losses incurred by the Customer in respect of damage to the Customer Sites caused by the Supplier or its Staff. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

B7.4 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Customer retains the right at any time to use any premises or sites owned or occupied by it in any manner it sees fit.

**B8 NOT USED**

**B9 OFFERS OF EMPLOYMENT**

1. B9.1 For the duration of this Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Supplier shall employ or offer employment to any of the other Party’s staff who have been associated with the procurement and/or the contract management of the Services without that other Party’s prior written consent.

**B10 TUPE AND PENSIONS**

B10.1 The Customer and the Supplier agree that where the identity of a contractor (including the Incumbent Supplier) of any service which constitutes or will constitute part of the Services is changed as a result of entering into or pursuant to this Contract (including upon termination of this Contract) then the change shall constitute a Relevant Transfer.

B10.2 The Supplier acknowledges and accepts that under the TUPE Regulations the contracts of employment of the Transferring Employees shall have effect (except in relation to occupational pension scheme benefits excluded under Regulation 10 of the TUPE Regulations) from the Transfer Date as if originally made between the Transferring Employees and the Supplier.

B10.2A The Supplier shall prior to any formal consultation required in accordance with the TUPE Regulations provide to all Transferring Employees basic guidance on their rights under the TUPE regulations and such guidance shall conform to government department issued guidance e.g. BIS Guidance on TUPE 2006 as amended.

B10.3 In the event that the Supplier enters into any Sub-Contracts in connection with this Contract, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to this Clause B10 and shall ensure that each Sub-Contractor complies with such terms. The Supplier shall indemnify the Customer and keep the Customer indemnified in full from and against all direct, indirect or consequential liability or Losses awarded against or incurred or paid by the Customer as a result of or in connection with any failure on the part of a Sub-Contractor to comply with such terms.

B10.4 The Supplier shall be responsible for all emoluments and outgoings in respect of all Relevant Employees employed by the Supplier or any Sub-Contractor, including without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions, pension contributions and otherwise, which are attributable in whole or in part to the period after the Commencement Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Commencement Date but which are attributable in whole or in part to the period after the Commencement Date). The Supplier shall indemnify and keep the Customer indemnified and harmless from and against all Losses and other liabilities which the Customer may incur in respect of the same.

B10.5 The Supplier shall fully and accurately disclose to the Customer (and shall ensure that any relevant Sub-Contractor accurately discloses) any and all information in relation to all personnel engaged in the provision of the Services and all information that the Customer may reasonably request in relation to the Staff within ten (10) Working Days of the Customer's request including the following:-

1. a list of employees employed by the Supplier, or any Sub-Contractor; and
2. a list of agency workers, agents and independent contractors engaged by the Supplier; and
3. the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel; and

d) the age, gender, salary or other remuneration, date of continuous employment commenced and, if different, the commencement date, accrued holiday entitlement, pension details, location, retirement, enhancement rates, and any other factors affecting their redundancy and pension entitlements and any outstanding claims arising from employment of the Staff referred to in Clause B10.5(a); and

(e) the terms and conditions of the employment/engagement of the Staff referred to in Clause B10.5(a), their job titles and qualifications; and

(f) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and

(g) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

B10.6 Where the Supplier provides information in accordance with Clause B10.5 and the Supplier or Sub-Contractor makes or becomes aware of any changes or discovers new information the Supplier shall notify the Customer within five (5) Working Days of any such change or discovery.

B10.7 At the time of providing the disclosed information pursuant to Clauses B10.5 and B10.6, the Supplier shall warrant the completeness and accuracy of all such information. The Supplier authorises the Customer to use any and all information provided under Clause B10 to the Customer as it considers necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

B10.8 The Customer may use the information it receives from the Supplier pursuant to Clauses B10.5 and B10.6 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Supplier shall provide the Replacement Contractor with such assistance as it shall reasonably request.

B10.9 The Supplier shall indemnify and keep indemnified and hold the Customer and the Crown (both for themselves and any Replacement Contractor) harmless from and against all Losses which the Customer or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:-

(a) the provision of information pursuant to Clause B10; and

(b) any claim or demand by any Relevant Employee as defined under TUPE (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each and every case arising directly or indirectly from any act, fault or omission of the Supplier in respect of any Relevant Employee on or before the end of the Contract Period; and

(c) any failure by the Supplier to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Contractor to comply with its duties under Regulation 13 of the Regulations; and

(d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Relevant Employees as defined under TUPE arising from or connected with any failure by the Supplier to comply with any legal obligation to such trade union, body or person; and

(e) any claim by any person who is transferred by the Supplier to the Customer and/or a Replacement Contractor whose name is not included in the list of Relevant Employees as defined under TUPE.

B10.10 The Supplier shall comply with the Pension Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

B10.11 The Supplier shall ensure that, in accordance with The Best Value Authorities Staff Transfers (Pensions) Direction 2007, a Transferring Original Employee shall be granted:

1. Pension rights that are broadly comparable to or better than those he/she has as an employee of the Incumbent Supplier; or
2. continued access to the Local Government Pension Scheme for those employees who at the Transfer Date are members of that pension scheme; and
3. terms and conditions of employment which allow the Transferring Original Employee to enforce the protection afforded under The Best Value Authorities Staff Transfers (Pensions) Direction 2007.

B10.12 This Clause B10 applies during the Contract Period and indefinitely thereafter.

B10.13 The Supplier undertakes to the Customer that, during the twelve (12) Months prior to the end of the Contract Period the Supplier shall not (and shall procure that any Sub-Contractor shall not) without the prior consent of the Customer (such consent not to be unreasonably withheld or delayed):-

(a) amend or vary (or purport or promise to amend or vary) the terms and conditions of the employment or engagement including for the avoidance of doubt pay of any Staff (other than where such amendment or variation has previously been agreed between the Supplier and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);

(b) terminate or give notice to terminate the employment or engagement of any of the Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capacity);

(c) transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services other than where such transfer or removal: (i) was planned as part of the individual’s career development; (ii) takes place in the normal course of business; and (iii) shall not have any adverse impact upon the delivery of the Services by the Supplier, PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services; and

1. recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

B10.14 The Supplier confirms that it shall comply fully with its obligations under the TUPE Regulations in respect of providing information to any subsequent supplier (including any Replacement Contractor). The Supplier warrants that any information provided in accordance with Regulation 11 of the TUPE Regulations shall be accurate and complete.

B10.15 The Supplier shall indemnify and keep the Customer and any Replacement Contractor indemnified in full from and against direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Customer or any Replacement Contractor as a result of or in connection with:-

1. the employment or termination of employment of any Relevant Employee or employee of any Sub-Contractor during any period prior to and including the date of expiry or termination of this Contract; and
2. any claim brought against the Customer or any Replacement Contractor as a result of the Supplier's failure to comply with any of its obligations under the TUPE Regulations and this Contract.

B10.16 Notwithstanding any provisions of this Contract, for the purposes of Clause B10 and in accordance with the Contracts (Rights of Third Parties) Act 1999, the Parties accept that any Replacement Contractor shall be entitled to enforce the benefits conferred to it under this Contract. If the Parties rescind this Contract or vary it in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Contractor shall not be required for such rescission, variation or termination.

B10.17 The Customer shall from the commencement of the last eighteen (18) Months of the Contract be entitled to apply retention of 5% against each invoice which will become due for payment in accordance with the Contract. The retention monies shall be held by the Customer until a Replacement Contractor has been awarded a contract for the Services under this Contract and shall be released to the Supplier within ten (10) Working Days of the commencement date of the contract with the Replacement Contractor PROVIDED ALWAYS that the Supplier has fully complied with its obligations under Clauses B10.2A, B10.5. B10.6, B10.7 and B10.13. Any failure of the Supplier to comply with the aforesaid provisions shall constitute an automatic forfeiture of the retention monies

**B11BEST VALUE**

B11.1 The Supplier shall provide to the Customer all such assistance, information and documentation as the Customer shall reasonably require for the purpose of compliance with its obligations of Best Value under Part 1 of the Local Government Act 1999.

**B12 SERVICE IMPROVEMENT**

B12.1 The Supplier shall throughout the duration of this Contract identify and discuss any improvements and enhancements which would improve the Services and delivery of the Services with the Customer. Without prejudice to the a foregoing, the Supplier shall, at its own cost submit a report to the Customer within thirty (30) Working Days of the end of each Contract Year, which shall identify the emergence of new and evolving relevant technologies, processes and any other change which could improve the Services and the delivery thereof. Such report shall be provided in sufficient detail to enable the Customer to evaluate properly the benefits of the change.

B12.2 If the Customer wishes to incorporate any improvement identified by the Supplier pursuant to Clause B12.1, the Customer shall send the Supplier a Customer Change Control Notice and the Parties shall discuss the implementation of the associated Change in accordance with the Change Control Procedure provided always that if the Supplier’s costs in providing the Services to the Customer are reduced as a result of any business change implemented by the Supplier, a saving as agreed between the Parties shall be passed on to the Customer by way of a consequential and immediate reduction in the Service Charges.

**B13 BUSINESS CONTINUITY**

B13.1 The Supplier shall ensure that it is able to implement the provisions of the Disaster Recovery and Business Continuity Plan at any time in accordance with its terms to ensure that the Services shall be maintained in the event of disruption (including disruption to information technology systems and the supply chain) to the Supplier's operations and those of its Sub-Contractors however caused. Such contingency plans shall be available for the Customer to inspect and to practically test at any reasonable time and shall be subject to regular updating and review throughout the Contract Period in accordance with Schedule 6.

B13.2 The Supplier shall test the Disaster Recovery and Business Continuity Plan on a regular basis (and, in any event, not less than once in every twelve (12) Month period). The Customer shall be entitled to participate in such tests as it may reasonably require.

B13.3 Following each test, the Supplier shall send to the Customer a written report summarising the results of the test within ten (10) Working Days of the completion of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.

B13.4 In the event of any significant changes to the Disaster Recovery and Business Continuity Plan, the Supplier shall provide such updated plan to the Customer within ten (10) Working Days of the implementation of the change.

B13.5 The Supplier shall implement the Disaster Recovery and Business Continuity Plan in the event that the Services are not available for more than forty eight (48) hours.

**C PAYMENT AND SERVICE CHARGES**

**C1 SERVICE CHARGES**

C1.1In consideration of the Supplier’s proper performance of its obligations under this Contract, the Customer shall pay the Service Charges in accordance with Clause C2 (Payment and VAT) and Schedule 3 (Payment Mechanism).

C1.2 The Customer shall, subject to Clause C1.1, in addition to the Service Charges and following Receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with this Contract.

**C2 PAYMENT AND VAT**

C2.1 The Supplier shall submit a Service Report to the Customer's Representative in respect of the Services rendered on a Monthly basis in arrears, no later than seven (7) calendar days after the last day of each relevant Month.

C2.2 The Customer may request any further information it may require in order to satisfy itself that the amount claimed under the Service Report is properly due and payable in respect of Services properly delivered in accordance with the requirements of the Contract. In the event that the Parties cannot agree the levels under the Service Report, such dispute shall be referred to the procedures set out in Clause I2.

C2.3 Once satisfied with the Service Report, the Customer's Representative shall instruct the Supplier to submit an invoice in accordance with Schedule 3.

C2.4 Where the Customer fails to comply with Clause C2.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Schedule 3 after a reasonable time has passed.

C2.5 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing its obligations under this Contract, it shall ensure that a provision is included in such a Sub-Contract which requires:-

1. payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) days from the Receipt of a valid invoice; and
2. the counterparty to that Sub-Contract to include in any sub-contract which it awards provisions having the same effect as the provisions of clause C2.4(a).

C2.6 All payments to be made by the Customer under this Contract are stated to be exclusive of VAT which shall be additionally paid by the Customer where relevant at the prevailing rate and from time to time in the manner prescribed by Law.

C2.7 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Customer at any time in respect of the Supplier’s failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause C2.6 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

C2.8 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Contract under Clause H2.6 (Termination on Default) for failure to pay undisputed sums of money.

C2.9 Interest shall be payable on the late payment of any undisputed sums of money due to either Party under this Contract such interest to be calculated at the rate of 4% over the Bank of England base rate for the time being, from the final date for payment to and including the date on which such amount is paid or discharged.

C2.10 Where payment by the Customer of all or any part of any invoice submitted or other claim for payment by the Supplier is disputed, this dispute shall be resolved as follows:-

1. Notwithstanding Clause C3, payment by the Customer of all or any part of any Service Charges rendered or other claim for payment by the Supplier shall not signify approval. The Customer reserves the right to verify the Service Charges after the date of payment and subsequently to recover any sums which have been overpaid.
2. If any part of a claim rendered by the Supplier is disputed or subject to question by the Customer either before or after payment then the Customer may call for the Supplier to provide such further documentary or oral evidence or meet with the Customer, as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Supplier shall promptly provide such evidence in a form satisfactory to the Customer.
3. If any part of a claim rendered by the Supplier is disputed or subject to question by the Customer, the Customer shall not withhold payment of the remainder.
4. If any Service Charge rendered for payment by the Supplier is paid but any part of it is disputed or subject to question by the Customer and such part is subsequently agreed or determined not to have been properly payable then the Supplier shall forthwith repay such part to the Customer.

C2.11 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Customer pursuant to this Contract and shall declare and make available for inspection to the Customer all Service Charges components including profit, central office overheads and all and any relevant books of account, correspondence, agreements, orders, invoices, receipts and other relevant documents. Such records shall be retained for inspection by the Customer twelve (12) years from the end of the Contract Year to which the records relate.

C2.12 Without prejudice to Clause C2.6, for the avoidance of doubt, it shall be the sole responsibility of the Supplier to:-

1. assess the VAT rate and tax liability arising out of or in connection with the Contract; and
2. account for or pay any VAT (and any other tax liability) relating to payments made to the Supplier under the Contract to HM Revenue and Customs ("HMRC").

C2.13 The Customer shall not be liable to the Supplier in any way whatsoever for any error or failure by the Supplier (or the Customer) in relation to VAT, including without limit:-

1. where the Supplier is subject to a VAT ruling(s) by HMRC (or such other relevant authority) in connection with the Contract;
2. where the Supplier has assumed that it can recover input VAT and (for whatever reason) this assumption is subsequently held by HMRC (or such relevant authority) to be incorrect or invalid; and/or
3. where the Supplier's treatment of VAT in respect of any claim for payment made under the Contract is subsequently held by HMRC (or such other relevant authority) for whatever reason to be incorrect or invalid;
4. where the Supplier has specified a rate of VAT, or a VAT classification, to the Customer (including but not limited to Out of Scope, Exempt, 0%, Standard Rate and Reduced Rate) but the Supplier subsequently regards such a rate , or such a classification, as being a mistake on its part. Further, in this scenario C2.12 (d), the Supplier shall be obliged to repay any overpayment by the Customer on demand.

C2.14 Where the Supplier does not submit a VAT invoice together with any claim for payment of the Services Charges, the Customer shall not be liable to pay any VAT for that claim of the Service Charges either when it falls due or at any later date.

**C3 RECOVERY OF SUMS DUE**

C3.1 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Contract or under any other agreement or contract with the Customer.

C3.2 Any overpayment by either Party, whether of the Service Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Supplier shall make all payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**C4 INDEXATION OF SERVICE CHARGES**

C4.1 The Service Charges shall apply for the Contract Period but shall be subject (save for the uplift percentage of Replacement Parts as provided for within Schedule 3) to indexation in line with RPIX. The indexation base date for the Service Charges shall be August 2020 and the Service Charges shall be indexed on the 1st of April every Contract Year from 1st April 2022, using the calculation set out in Schedule 3.

**C5 PERFORMANCE MANAGEMENT**

C5.1 The Supplier shall ensure that the Services meet or exceed the Service Levels at all times from the Commencement Date.

C5.2 The Supplier shall provide the Customer with a Service Report no less than seven (7) Working Days prior to the end of each Month.

C5.2 The Customer shall monitor the Supplier's performance of the Services in accordance with this Contract and shall notify the Customer's Representative of any Service Failure or Critical Service Failure occurring during the provision of the Services.

C5.3 Upon receipt of such notice as provided for in Clause C5.2, the Customer's Representative shall notify the Supplier's Representative of such Service Failure or Critical Service Failure and the remedial action provided in Schedule 4, within five (5) Working Days of becoming aware of the same and confirm what remedial action is required and the level of Performance Deduction that shall apply, in accordance with Schedule 4.

C5.4 The Representatives of both Parties shall have regular Quarterly meetings to monitor and review the performance of this Contract, the achievement of the Service Levels and the provision of the Services. Such meetings shall be minuted by the Customer and copies of the minutes shall be circulated to and approved by both Parties.

C5.5 Prior to each Quarterly meeting, the Customer shall notify the Supplier’s Representatives, and vice versa, of any problems relating to the provision of the Services for discussion at the Quarterly meeting. At the meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree a plan, the procedures set out in Clause H7 shall apply. Progress at implementing the plan shall be included in the agenda for the next Quarterly meeting.

C5.6 The Customer and the Supplier shall review the Service Levels every six (6) Months throughout the Contract Period and make any changes in accordance with the Change Control procedure to reflect the changes in the Service Levels.

C5.7 The right to apply Performance Deduction shall be without prejudice to any other right or financial remedy available to the Customer arising out of the Supplier's failure to meet a Service Level.

C5.8 Notwithstanding the requirement to attend Quarterly meetings, the Supplier shall also attend any ad-hoc meetings requested by the Customer in relation to the provision of the Services, following three (3) days' notice of such a requirement by the Customer.

C5.9 The Supplier shall attend all such other meetings and provide such reports as may reasonably be required by the Customer including those reports and meetings as set out in Schedule 1 and Schedule 4.

**C6 CONTRACT MANAGEMENT**

C6.1 The Supplier shall work with the Customer to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered to at least the minimum required standard as specified. The Supplier shall ensure that it has suitable email systems at all times during the Contract Period to ensure that any communication required in the Specification is effective.

C6.2 The Supplier shall work with the Customer to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Supplier's management and delivery of it.

C6.3 The Supplier shall supply information requested relevant to the delivery of the Services to the Customer, using formats and to the timescales specified and/or agreed by the Customer.

C6.4 The Customer intends, wherever it can, to capture and collate information through its IT system(s). However, the Customer does reserve the right to make reasonable requests for information (at no additional charge) from the Supplier including ad-hoc requests for information from time to time.

C6.5 Any additional requests for information shall be considered in consultation with the Supplier as shall the process of defining the methods of collection.

C6.6 Where an ongoing, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within the Contract.

C6.7 Review meetings as referred to in Clause C5 between the Customer and the Supplier shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract.

C6.8 The Customer may undertake spot checks at any time to ensure that the Supplier is complying with its obligations under this Contract and the Supplier shall co-operate fully, at its own cost, with the Customer.

C6.9 The Supplier shall be responsible for managing and reporting on any Sub-Contractual arrangements. Arrangements shall include mechanisms for the provision of management information, change control procedures and the prompt resolution of any problems. The Customer shall agree with the Supplier day-to-day relationship management, contact points, communication flows and escalation procedures.

C6.10 The Supplier shall be expected to continuously improve the quality of the provision of the Services including that delivered by Sub-Contractors.

**STATUTORY OBLIGATIONS AND REGULATIONS**

**D1 PREVENTION OF BRIBERY**

D1.1 The Supplier:-

 (a) shall not and shall procure that all Staff shall not, in connection with this Contract commit a Prohibited Act;

 (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Contract.

D1.2 The Supplier shall:-

 (a) if requested, provide the Customer with any reasonable assistance, at the Customer’s reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

 (b) within five (5) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Supplier) compliance with this Clause D1 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

D1.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Staff from committing a Prohibited Act and shall enforce it where appropriate.

D1.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of or suspects any Default of Clause D1.1 or has reason to believe that it has or any Staff has:-

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act or Default of Clause D1.1(b);

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

(c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act or breach of Clause D1.1(b).

D1.5 If the Supplier notifies the Customer that it suspects or knows that there may be a breach of Clause D1*,* the Supplier must respond promptly and in any event within ten (10) Working Days to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documentation. This obligation shall continue for 12 (twelve) calendar years following the expiry or termination of this Contract.

D1.6 The Customer may:-

1. terminate this Contract by written notice with immediate effect and recover from the Supplier the amount of any Loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period if the Supplier breaches Clause D1; and
2. recover in full from the Supplier any other Losses sustained by the Customer in consequence of any Default of Clause D1.

 D1.7 Any notice of termination under Clause D1.6 must specify:-

1. the nature of the Prohibited Act;
2. the identity of the party whom the Customer believes has committed the Prohibited Act; and

(c) the date on which this Contract shall terminate.

D1.10 Despite Clause I2 (Disputes), any dispute relating to:-

1. the interpretation of Clause D1; or
2. the amount or value of any gift, consideration or commission,

shall be determined by the Customer acting reasonably having given due consideration to all relevant factors and its decision shall be final and conclusive.

D1.11 Any termination under Clause D1.6 shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

D1.12 In exercising its rights or remedies under Clause D1.6, the Customer shall act in a reasonable and proportionate manner having regard to such matters as the gravity of the conduct prohibited by Clause D1.1 and the identity of the person performing that Prohibited Act/prohibited conduct.

**D2 ANTI-DISCRIMINATION**

D2.1 The Supplier shall not unlawfully discriminate within the meaning and scope of Equality Legislation or other any Law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

D2.2 Not Used

D2.3 Not Used

D2.4 In performing this Contract the Supplier shall comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:-

* + - 1. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
			2. advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
			3. foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it

and for the avoidance of doubt this obligation shall apply whether or not the Supplier is a public authority for the purposes of section 149 of the Equality Act 2010.

D2.5 The Supplier shall take all reasonable steps to secure the observance of Clause D2.1 by all Staff employed in performance of this Contract.

D2.6 The Supplier shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination.

D2.7 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier’s performance of this Contract being in contravention of Equality Legislation or other any Law, enactment, order or regulation relating to discrimination, the Supplier shall, free of charge:-

1. provide any information requested in the timescale allotted;
2. attend any meetings as required and permit the Staff to attend;
3. promptly allow access to and investigation of any documents or data deemed to be relevant;
4. allow the Supplier and any of the Staff to appear as witness in any ensuing proceedings, and
5. cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

D2.8 Where any investigation is conducted or proceedings are brought under Equality Legislation or other any Law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Supplier, its agents, Sub-Contractors or Staff, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier shall indemnify the Customer with respect to all Losses arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Customer may have been ordered or required to pay to a third party.

D2.9 The Supplier must ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.

D2.10 The Supplier acknowledges that the Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Supplier shall provide all necessary assistance and information to the Customer as may be required in relation to the performance of an impact analysis by the Customer. The Supplier shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Customer.

**D3 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

D3.1 A person who is not a Party to this Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

**D4 ENVIRONMENTAL REQUIREMENTS**

D4.1 The Supplier shall, when working at any Site in the delivery of the Services, perform its obligations under this Contract in accordance with the Customer’s environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**D5 HEALTH AND SAFETY**

D5.1 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Law relating to health and safety, which may apply to the Staff and other persons working at/on the Site and any Customer Site in the performance of its obligations under this Contract.

D5.2 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

D5.3 The Supplier shall ensure that its Staff shall;

Undergo any site induction training required by the Customer, the relevant Site Management Company or any of the Customer's Agent working at the relevant Customer Site;

Wear suitable personal protective equipment (PPE) when any Customer Site's. Including, but not limited to, protective footwear with toe protection and mid sole protection, safety gloves and a high visibility vest or jacket worn as the outermost layer and/or any other PPE as specified in site induction training which may at any time be updated in accordance with the Customer's and relevant Site Management Company's Health and Safety policies, or any other PPE identified in the Supplier's health and safety policy and/or documents.

D5.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under this Contract at the Sites and/or any Customer Sites where that incident causes any personal injury and/or damage to property which could give rise to personal injury claim and/or other claim in relation to such damage to property.

D5.4 The Supplier shall promptly (within twenty four (24) hours) notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at any Customer Sites and which may affect the Supplier in the performance of its obligations under this Contract.

D5.5 While on any Customer Sites, the Supplier shall comply with any health and safety measures implemented by the Customer or relevant Site Management Company in respect of its Staff and other persons working there.

D5.6 The Supplier shall produce to the Customer all relevant risk assessments and method statements ("RAMS") for any work carried out on the Customer Site. For any non-standard operations the Supplier must provide the Customer with a copy of such RAMS for the work being undertaken for approval prior to the works being carried out.

D5.7 The Supplier shall co-operate with officers of the Customer, relevant Site Management Company or its representatives, investigating any health and safety matter.

**PROTECTION OF INFORMATION**

**E1 DATA PROTECTION**

E1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, there is no Personal Data to be Processed during the Contract Period. However, in the event that there is any such Processing of Personal Data, the Parties shall act in accordance with Data Protection Legislation and shall make any necessary further amendments to the Contract to crystallise their obligations in relation to such Processing.

**E2 CONFIDENTIAL INFORMATION**

E2.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:-

1. treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E2.2 Clause E2.1 shall not apply to the extent that:-

(a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause E3 (Freedom of Information);

(b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

(c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

(e) it is independently developed without access to the other Party's Confidential Information.

E2.3 The Supplier may only disclose the Customer's Confidential Information to Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations of confidentiality.

E2.4 The Supplier shall not use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.

E2.5 At the written request of the Customer, the Supplier shall procure that the Staff identified in the Customer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

E2.6 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information:-

(a) to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;

(b) to any consultant, professional adviser, contractor, supplier or other person engaged by the Customer or any person conducting a government office gateway review;

(c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(d) for the purpose of the examination and certification of the Customer's accounts;

1. on a confidential basis for the purpose of the exercise of its rights under this Contract including for auditing purposes, to a body to novate, assign or dispose of its rights under the Contract (Clause F1.8), to a Replacement Contractor (Clause H6.2) and for the purpose of the examination and certification of the Customer's accounts; or

(f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

E2.7 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause E2.6 is made aware of the Customer's obligations of confidentiality.

E2.8 Nothing in this Clause E2 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

E2.9 Any breach by the Supplier of Clauses E2.1 – E2.4 shall be a breach incapable of remedy for the purposes of Clause H2 and shall entitle the Customer (at its absolute discretion) to exercise its rights under the corresponding provisions of Clause H2.

E2.10 The Parties acknowledge that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

E2.11 Notwithstanding any other term of this Contract, the Supplier hereby gives consent for the Customer to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

**E3 TRANSPARENCY AND FREEDOM OF INFORMATION**

E3.1 The Parties acknowledge that the content of this Contract, including any changes to this Contract agreed from time to time, except for:-

1. any Information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Customer; and
2. Commercially Sensitive Information

(together the "Transparency Information") is not Confidential Information.

E3.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any Information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

E3.3 The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information.

E3.4 The Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude Information from publication it will provide a clear explanation to the Supplier. If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such Information from publication. The Supplier acknowledges that the Council would expect the public interest by default to be best served by publication of the Transparency Information in its entirety.

E3.5 The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the Information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.

E3.6 The Supplier agrees that any Information it holds that is reasonably relevant to or that arises from the provision of the Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such Information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause E2.6(c)) and E11) publish such Information. The Supplier shall provide to the Customer within five (5) Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.

E3.7 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

E3.8 The Supplier shall and shall procure that any Sub-Contractors shall:-

1. transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

(b) provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

(c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E3.9 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

E3.10 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.

E3.11 The Supplier acknowledges that (notwithstanding the provisions of Clause E3.7) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under section 45 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services in certain circumstances:-

1. without consulting the Supplier; or
2. following consultation with the Supplier and having taken their views into account;

provided always that where E3.11(a) applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure.

E3.12 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

E3.13 The Supplier acknowledges that the Customer may be obliged to disclose Commercially Sensitive Information in accordance with this Clause E3.

**E4 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

E4.1 The Supplier shall not:-

1. make any press announcements or publicise this Contract or its contents in any way; or
2. use the Customer's name or brand/logo in any promotion or marketing or announcements of orders

without the Approval of the Customer which shall not be unreasonably withheld or delayed.

E4.2 Both Parties shall take reasonable steps to ensure that their employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Clause E4.1.

E4.3 If so requested by the Customer, the notepaper and other written material of the Supplier and Sub-Contractors relating to the delivery of the Services shall carry only logos and markings Approved by the Customer.

E4.4 All publicity and marketing material produced by the 0Supplier and/or its Sub-Contractors in relation to this Contract shall be submitted to the Customer for Approval and no such items shall be printed (other than for purposes of Approval) until such Approval is received.

**E5 SECURITY**

E5.1 The Customer shall be responsible for arranging access to any Customer Site with the relevant Customer.

E5.2 During any period which the Supplier is left unaccompanied on a Customer Site to complete Services on any such Site, the Supplier shall be responsible for maintaining the security of the relevant Customer Site in accordance with its standard security requirements.

E5.3 In any event, the Supplier shall comply with all security requirements of the Customer and the relevant Site Management Company, while on any Customer Sites.

**E6 INTELLECTUAL PROPERTY RIGHTS**

E6.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):-

(a) furnished to or made available to the Supplier by or on behalf of the Customer shall remain the property of the Customer ("the Customer's IP"); and

(b) prepared by or for the Supplier on behalf of the Customer for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract shall belong to the Supplier ("the Supplier's IP");

and the Supplier shall not (except when necessary for the performance of this Contract) without prior Approval, use or disclose any Intellectual Property Rights in the Customer's IP.

E6.2 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Contract or the performance of this Contract.

E6.3 The Customer shall grant to the Supplier a non-exclusive, revocable, free licence for the Contract Period to use the Customer's IP where it is necessary for the Supplier to supply the Services. The Supplier shall have the right to sub-licence the Supplier's use of the IP Materials. At the end of the Contract Period or early termination thereof the Supplier shall cease to use and shall ensure that any Sub-Contractor ceases to use the Customer's IP.

E6.4 The Supplier shall grant the Customer a non-exclusive, irrevocable, free licence for the Contract Period to use the Supplier's IP where it is necessary for the Customer in the provision of the Services. At the end of the Contract Period, the Customer shall cease to use the Supplier's Intellectual Property Rights.

E6.5 The Supplier shall grant the Customer a non-exclusive, irrevocable, free licence for the Contract Period to use the Supplier's Intellectual Property Rights where it is necessary for the Customer in the provision of the Services. At the end of the Contract Period, the Customer shall cease to use the Supplier's Intellectual Property Rights.

E6.6 The Supplier shall obtain Approval from the Customer before using any material in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Supplier shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Contract grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable. That licence or sub-licence shall also include the right for the Customer to sub-licence, transfer, novate or assign to other Contracting Bodies, the Replacement Contractor or to any other third party supplying services to the Customer.

E6.7 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services. The Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer harmless from and against all Losses which the Customer may suffer or incur as a result of or in connection with any breach of this Clause E6, except where any such claim arises from:-

(a) items or materials based upon designs supplied by the Customer; or

(b) the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of this Contract.

E6.8 The Customer shall notify the Supplier in writing of any claim or demand brought against the Customer for infringement or alleged infringement of any Intellectual Property Rights in materials supplied or licensed by the Supplier.

E6.9 The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:-

(a) shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Customer; and

(c) shall not settle or compromise any claim without the Customer’s Approval (not to be unreasonably withheld or delayed).

E6.10 The Customer shall at the request of the Supplier provide the Supplier with all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Customer or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier’s obligations under this Contract. The Supplier shall indemnify the Customer for all Losses incurred in doing so.

E6.11 The Customer and the Supplier shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights by the Customer or the Supplier in connection with the performance of this Contract.

E6.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with this Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Customer and, at its own expense and subject to the Approval of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or

(b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,

and in the event that the Supplier is unable to comply with Clauses E6.12(a) or (b) within twenty (20) Working Days of receipt of the Supplier’s notification the Customer may terminate this Contract with immediate effect by notice in writing.

**E7 AUDIT**

E7.1 The Supplier shall keep and maintain until twelve (12) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of this Contract including the Services supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer’s Representatives such access to those records as may be requested by the Customer in connection with this Contract.

E7.2 The Customer may at any time during the Contract Period and for a period of twelve (12) Months after the Contract Period, conduct an audit for the following purposes:-

1. to verify the accuracy of the Service Charges that become due and payable by the Customer to the Supplier in respect of the Services (and proposed or actual Changes to them in accordance with the Contract) or the costs of all suppliers (including Sub-Contractors) of the Services;
2. to review the integrity, confidentiality and security of the Customer Personal Data;
3. to review the Supplier's compliance with the DPA, FOIA and other Law applicable to the Services;
4. to review the Supplier's compliance with its obligations under the Contract;
5. to review any records created during the provision of the Services;
6. to review any books of account kept by the Supplier in connection with the provisions of the Services;
7. to carry out the audit and certification of the Customer's accounts;
8. to carry out an examination of the economy efficiency and effectiveness with which the Customer has used its resources; and
9. to verify the accuracy and completeness of any management information delivered or required by this Contract.

E7.3 The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

E7.4 Subject to the Customer's obligation of confidentiality, the Supplier shall on demand provide the Customer and any other Regulatory Body (and/or their agents or representatives) with all reasonable co-operation, access and assistance in relation to each audit, including:-

1. all Information requested within the permitted scope of the audit;
2. reasonable access to any premises or sites controlled by the Supplier and to any Equipment and Assets used (whether exclusively or non-exclusively) in the performance of the Services;
3. access to the Staff;
4. access to software owned or licenced to the Supplier including software which is or will be used by the Supplier for the purposes of providing the Services; and
5. accommodation (including desks) at the Supplier's premises as reasonably required to conduct the audit.

E7.5 The Customer shall endeavour to (but shall not be obliged to) provide at least fourteen (14) calendar days' notice of its intention to conduct an audit.

E7.6 If an audit identifies that:-

1. the Supplier has committed a material Default which is capable of remedy, the Supplier shall correct such Default as soon as reasonably practicable and implement a Remediation Plan in accordance with the Remediation Plan Process;
2. the Customer has overpaid any charges that became due and payable by the Customer to the Supplier in respect of the Services properly rendered, the Supplier shall pay to the Customer the amount overpaid within twenty (20) Working Days. The Customer may deduct the relevant amount from any further payment when due if the Supplier fails to make the payment; and
3. the Customer has underpaid any charges that become due and payable by the Customer to the Supplier in respect of the Services properly rendered, the Customer shall pay to the Supplier the amount of the under-payment less the cost incurred by the Customer of the audit if this was due to a Default by the Supplier within twenty (20) Working Days.

**E8 EXCEPTIONAL AUDITS**

E8.1 The Supplier shall permit the Customer and/or its appointed representatives access to conduct an audit (an "Exceptional Audit") of the Supplier in any of the following circumstances:-

1. actual or suspected impropriety or Fraud;
2. there are reasonable grounds suspect that:-

(i) the Supplier is in Default under the Contract; or

(ii) the Supplier is in financial distress or at risk of insolvency or bankruptcy, or any fact, circumstance or matter which is reasonably likely to cause the Supplier financial distress and result in a risk of the Supplier becoming insolvent or bankrupt;

(each an "Exceptional Circumstance").

E8.2 If the Customer notifies the Supplier of an Exceptional Circumstance and that it wishes to conduct an Exceptional Audit, the Supplier shall provide access in accordance with Clause E7.4 as soon as reasonably practicable after such request and in any event within forty eight (48) hours of the request having been made.

**E9 AUDIT COSTS**

E9.1 The Parties agree that they shall each bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses E7.2 to E8.2 unless an audit identifies a material Default by the Supplier in which case the Supplier shall reimburse:-

(a) the Customer for all the Customer's identifiable, reasonable costs and expenses properly incurred in the course of the audit; and

(b) where the Customer, a Regulatory Body and Auditor General appoint another body to conduct an audit, the Customer shall be able to recover on demand from the Supplier the identifiable, reasonable and properly incurred costs and expenses of the relevant body.

**E10 NOT USED**

**E11 RECORDS AND OPEN BOOK ACCOUNTING**

E11.1The Supplier shall (and shall procure that each Sub-Contractor shall):

(a) at all times maintain a full record of particulars of the costs of performing the Services;

(b) upon request by the Customer, provide a written summary of any of the costs referred to in Clause E11.1(a), in such form and detail as the Customer may reasonably require to enable the Customer to monitor the performance by the Supplier of its obligations under the Contract;

(c) provide such facilities as the Customer may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause E11.1; and

(d) provide to the Customer copies of its annual report and accounts within twenty (20) Working Days of publication.

E11.2 Compliance with Clause E11.1 shall require the Supplier to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to the Contract, showing in detail:

(a) administrative overheads;

(b) payments made to the Sub-Contractors and from the Sub-Contractors to their sub-contractors;

(c) capital and revenue expenditure; and

(d) such other items as the Customer may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of the Contract,

and the Supplier shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in sub-clauses E11.2(a) to E11.2(d) inclusive, available for inspection by the Customer (and its advisers) upon reasonable notice pursuant to Clause E7, and shall provide a copy of these to the Customer as and when requested from time to time.

E11.3The Supplier shall maintain that detailed records relating to the performance of the Services, in each case in accordance with Good Industry Practice and any applicable Legislation.

E11.4 Without prejudice to Clause E11.3, the Supplier shall ensure that the following are maintained:

(a) a full record of all incidents relating to health, safety and security which occur during the Contract Period;

(b) full records of all maintenance procedures carried out during the Contract Period

(c) full records of all staff matters including turnover, pay and disciplinary matters,

(d) full records of parts removed from Compactors and Replacement Parts used;

(e) all maintenance records for the Compactors

and the Supplier shall have the items referred to in clauses E11.4(a) to E11.4(c) available for inspection by the Customer (and its advisers) upon reasonable notice, and shall provide copies of these to the Customer as and when requested from time to time.

E11.5 Upon termination or expiry of the Contract, and in the event that the Customer wishes to enter into an agreement with any Replacement Contractor, the Supplier shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Customer to provide information relating to the Supplier's costs of providing the Services (if applicable for the Services).

E11.6 All information referred to in this Clause E11 is subject to the obligations set out in Clauses E2 and E3.

**CONTROL OF THE CONTRACT**

**F1 TRANSFER AND SUB-CONTRACTING**

F1.1 Except where F1.4 and F1.5 applies, the Supplier shall not assign, sub-contract or in any other way dispose of this Contract or any part of it without prior Approval.

F1.2 The Supplier shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

F1.3 Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable but at least within ten (10) Working Days of the request.

F1.4 Notwithstanding Clause F1.1, the Supplier may assign to a third party (“the Assignee”) the right to receive payment of the Service Charges or any part thereof due to the Supplier under this Contract (including any interest which the Supplier may incur under Clause C2.6). Any assignment under this Clause F1.4 shall be subject to:-

(a) reduction of any sums in respect of which the Customer exercises its right of recovery under Clause C3 (Recovery of Sums Due);

(b) all related rights of the Customer under the Contract in relation to the recovery of sums due but unpaid; and

(c) the Customer receiving notification under both Clauses F1.5 and F1.6.

F1.5 In the event that the Supplier assigns the right to receive the Service Charges under Clause F1.4, the Supplier shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Supplier shall ensure that the Assignee notifies the Customer of the Assignee’s contact information and bank account details to which the Customer shall make payment at least five (5) Working Days prior to submission of the relevant invoice.

F1.7 The provisions of Clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Customer.

F1.8 Subject to Clause F1.10, the Customer may assign, novate or otherwise dispose of its rights and obligations under this 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 Customer; or

(c) any private sector body which substantially performs the functions of the Customer,

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier’s obligations under this Contract.

F1.9 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause F1.8, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Customer.

F1.10 The Customer may disclose to any of its assignees Confidential Information of the Supplier which relates to the performance of the Supplier’s obligations under this Contract. In such circumstances the Customer shall authorise the Assignee to use such Confidential Information only for purposes relating to the performance of the Supplier’s obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Assignee gives a confidentiality undertaking in relation to such Confidential Information.

F1.11 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 this Contract.

**F2 WAIVER**

F2.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause A5 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

**F3** **CHANGE CONTROL PROCEDURE**

 Without prejudice to any other provision contained in the Contract:-

 **CUSTOMER CHANGE**

F3.1 The Customer has the right to propose a Change in the Services in accordance with this Clause F3.1. If the Customer requires a Change, it must serve a Customer Change Control Notice on the Supplier. The Customer shall not propose a Change that:-

(a) requires the Services to be performed in a way that infringes any Law or is inconsistent with Good Industry Practice;

(b) would cause any consent to be revoked (or unobtainable);

(c) would, if implemented, result in a material change in the nature of the Services; and/or

(d) would materially and adversely affect the Supplier's ability to perform the Services or cause or be likely to cause loss of revenue or incur expenditure in a way that is not adequately compensated for.

F3.2 The Customer Change Control Notice shall:-

1. set out the Change required in sufficient detail to enable the Supplier to calculate and provide an estimate of the variation in costs and or loss in revenue (the “Supplier’s Change Control Response”); and

(b) require the Supplier to provide the Customer within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) of receipt of the Customer Change Control Notice with the Supplier’s Change Control Response.

F3.3 As soon as practicable and in any event within ten (10) Working Days (or such other reasonable period of time as the Parties shall agree) after having received the Customer Change Control Notice, the Supplier shall deliver to the Customer the Supplier’s Change Control Response. The Supplier’s Change Control Response shall include the opinion of the Supplier on:-

(a) whether relief from compliance with obligations is required, including the obligations of the Supplier to meet the Service Levels contained in the Contract during the implementation of the Change;

(b) any impact on the provision of the Services;

(c) any amendment required to this Contract as a result of the Change; and

(d) any loss of revenue or prospective revenue to the Supplier or Sub-Contractor that results from the Change.

F3.4 As soon as practicable after the Customer receives the Supplier’s Change Control Response, the Parties shall discuss and agree the issues set out in the Supplier’s Change Control Response, including:-

(a) providing evidence that the Supplier has used all reasonable endeavours (including the use of competitive quotes) to oblige its Sub–Contractors (if any) to minimise any increase in costs and maximise any reduction in costs;

(b) demonstrating that the relevant Changes shall be implemented in the most cost effective manner; and

(c) in such discussions the Customer may modify the Customer Change Control Notice, in which case the Supplier shall, as soon as practicable, and in any event not more than seven (7) Working Days (or such other reasonable period of time as the Parties shall agree) after receipt of such modification, notify the Customer of any consequential changes to the Supplier’s Change Control Response.

F3.5 If the Parties cannot agree on the contents of the Supplier’s Change Control Response then the dispute shall be determined in accordance with Clause I2 (Dispute).

F3.6 As soon as practicable after the contents of the Supplier’s Change Control Response has been agreed or otherwise determined pursuant to Clause I2 (Dispute), the Customer shall:-

(a) confirm in writing the Supplier’s Change Control Response (as modified); or

(b) withdraw the Customer Change Control Notice.

F3.7 If the Customer does not confirm in writing the Supplier’s Change Control Response (as modified) within fifteen (15) Working Days (or such other reasonable period of time as the Parties shall agree) of the contents of the Supplier’s Change Control Response having been agreed in accordance with Clause F3.4 above or determined pursuant to Clause F3.6 above, then the Customer Change Control Notice shall be deemed to have been withdrawn.

F3.8 In the event that the Supplier’s Change Control Response has been confirmed by the Customer, the relevant Change shall be implemented within seven (7) Working Days of the Customer’s acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract which are necessary to give effect to the Change.

 **SUPPLIER CHANGE**

F3.9 If the Supplier wishes to introduce a Change, it must serve a Supplier Change Control Notice on the Customer.

F3.10 The Supplier Change Control Notice must:-

(a) set out the proposed Change in sufficient detail which detail shall include but not be limited to impact on Service delivery and financial implications so as to enable the Customer to evaluate it in full;

(b) specify the Supplier’s reasons for proposing the Change;

(c) request the Customer to consult with the Supplier with a view to deciding whether to agree to the Change and, if so, what consequential changes the Customer requires as a result;

(d) indicate any implications of the Change(s); and

(e) indicate if there are any dates by which a decision by the Customer is critical.

F3.11 The Customer shall evaluate the Supplier’s proposed Change in good faith, taking into account all relevant issues, including whether:-

(a) the Change affects the quality of the Services or the likelihood of successful delivery of the Services;

(b) the Change shall interfere with the relationship of the Customer with third parties;

(c) the financial strength of the Supplier is sufficient to perform the Change; and

(d) the Change materially affects the risks or costs to which the Customer is exposed.

F3.12 As soon as practicable after receiving the Supplier Change Control Notice, the Parties shall meet and discuss the matter referred to in it. During their discussions the Customer may propose modifications or accept or reject the Supplier Change Control Notice.

F3.13 If the Customer accepts the Supplier Change Control Notice (with or without modification), the relevant Change shall be implemented within seven (7) Working Days of the Customer’s acceptance. Within this period, the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract which are necessary to give effect to the Change.

F3.14 If the Customer rejects the Supplier Change Control Notice, it shall give its reasons for such a rejection.

F3.15 The Customer cannot reject a Change that is required in order to conform to change in Law relating to the Services which was not reasonably foreseeable at the Commencement Date provided that such a Change does not materially affect the quality or performance of the Services as required under the Contract.

**F4 SEVERABILITY**

F4.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

**F5 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

F5.1 In the event that the Customer is of the reasonable opinion that there has been a Default of this Contract by the Supplier, then the Customer may, without prejudice to its rights under Clause H2 (Termination on Default) or H7 (Remediation Plan Process) or H7A (Remediation plan in the event of a Critical Service Failure), do any of the following:-

(a) without terminating this Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier shall once more be able to supply all or such part of the Services in accordance with this Contract; and/or

(b) without terminating the whole of this Contract, terminate this Contract in respect of part of the Services only (whereupon a corresponding reduction in the Service Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services.

F5.2 Without prejudice to its rights under Clause C3 (Recovery of Sums Due), the Customer may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

**F6 REMEDIES CUMULATIVE**

F6.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**F7 FINANCIAL ASSURANCE**

F7.1 The Supplier shall immediately disclose to the Customer any material changes to the organisation that impacts on its ongoing financial viability including details of the revenue replacement strategy and impact awareness on the organisation's profitability and stability where significant contracts are due to end.

F7.2 The Supplier shall notify the Customer immediately of proposed changes to the organisational control or group structure, proposed mergers or acquisitions or proposed changes to the Supplier's financial viability.

F7.3 Only where requested by the Customer, shall the Supplier be obliged to provide any financial information which could include but is not limited to a copy of the Supplier's annual accounts and annual returns.

**F8 ENTIRE AGREEMENT**

F8.1 This Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F8.2 Each of the Parties acknowledges and agrees that in entering into this Contract, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

**F9 COUNTERPARTS**

F9.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

**LIABILITIES**

**G1 LIABILITY, INDEMNITY AND INSURANCE**

G1.1 Neither Party excludes or limits liability to the other Party for:-

(a) death or personal injury caused by its negligence; or

(b) Fraud; or

(c) fraudulent misrepresentation.

G1.2 Subject to Clause G1.1, the Supplier’s total aggregate liability in respect of Performance Deduction shall be limited in each Contract Year to 15%of the Service Charges that are payable by the Customer in the applicable Contract Year*.*

G1.3 Subject to Clauses G1.4 and G1.5, the Supplier shall indemnify the Customer and keep the Customer indemnified fully against all Losses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under this Contract or the presence of the Supplier on the Sites, including loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, all costs related to civil data protection claims or regulatory fines issued by the Information Commissioner's Offices or any other loss which is caused directly or indirectly by any act or omission of the Supplier.

G1.4 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under this Contract.

G1.5 Without prejudice to the Customer’s rights under this Contract, the Supplier shall in respect of the performance of its obligations under this Contract effect and maintain the following insurances at the following indemnity levels with a reputable insurance company:-

(a) public liability insurance to a minimum of ten million pounds (£10,000,000);

(b) employer’s liability insurance to a minimum of five million pounds (£5,000,000);and

(c) any other insurances as may be required by Law.

G1.6 The minimum amounts set out in Clause G1.5 shall, in each case, apply in respect of any single act or occurrence or a series of acts or occurrences arising from a single event but with no aggregate limit during any one period of cover. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of twelve (12) years following the expiration or earlier termination of this Contract.

G1.7 Subject always to Clause G1.1, in no event shall either Party be liable to the other for any:-

(a) loss of profits, business, revenue or goodwill; and/or

(b) loss of savings (whether anticipated or otherwise); and/or

(c) indirect or consequential loss or damage.

G1.8 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.

G1.9 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this Clause G1 or a broker’s verification of insurance to demonstrate that the appropriate cover is in place together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of this Contract, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

G1.11 The Supplier shall notify the Customer immediately of any alteration, cancellation or change of cover in respect of the insurances required by this Clause G1.

G1.12 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Contract.

**G2 WARRANTIES AND REPRESENTATIONS**

G2.1 The Supplier warrants and represents that:-

(a) it has full capacity, authority and all necessary Consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Supplier;

(b) in entering into this Contract it has not committed any Fraud;

(c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of this Contract;

(d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which shall or might have a material adverse effect on its ability to perform its obligations under this Contract;

(e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;

(f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier’s assets or revenue;

(g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;

(h) in the three (3) years prior to the date of this Contract:-

(i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

(ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

(iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Contract.

**DEFAULT, DISRUPTION AND TERMINATION**

**H1 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL**

H1.1 The Customer may terminate this Contract with immediate effect by notice in writing where the Supplier is a company and in respect of the Supplier:-

(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

(b) a shareholders’ meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

(c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator; or

(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

(g) being a “small company” within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

(h) any event similar to those listed in H1.1(a)-(g) occurs under the Law of any other jurisdiction.

H1.2 The Customer may terminate this Contract with immediate effect by notice in writing where the Supplier is an individual and:-

(a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier’s creditors; or

(b) a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier’s bankruptcy; or

(c) a receiver, or similar officer is appointed over the whole or any part of the Supplier’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

(d) the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or

(e) a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier’s assets and such attachment or process is not discharged within fourteen (14) days; or

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

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Supplier shall notify the Customer immediately if the Supplier undergoes a Change of Control . The Customer may terminate this Contract by notice in writing with immediate effect within six (6) Months of:-

(a) being notified that a Change of Control has occurred; or

(b) where no notification has been made, the date that the Customer becomes aware of the Change of Control,

 but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

**H2 TERMINATION ON DEFAULT**

H2.1 The Customer may terminate this Contract by written notice to the Supplier with immediate effect if the Supplier commits a Default and if:-

1. (a) the Supplier has not remedied the Default to the satisfaction of the Customer in accordance with a Remediation Plan; or

(b) the Default is not, in the opinion of the Customer, capable of remedy;

(c) the Default is a material breach of this Contract; or

(d) the Default constitutes a Critical Service Failure which is not, in the opinion of the Customer, capable of remedy

H2.2 Without prejudice to any other rights or remedies that the Customer has under the Contract (including without limitation Clause C5 and Clauses H1 or H2.1) where the Customer considers that the Supplier has committed a Persistent Breach in relation to the Contract or any part thereof (including any part of the Services), the Customer shall be entitled to serve a written notice ( a "Formal Warning Notice") on the Supplier:-

1. specifying that it is a Formal Warning Notice;
2. giving details of the Persistent Breach;
3. stating that if the Persistent Breach recurs two or more times within a three (3) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Services affected by the Persistent Breach.

H2.3 If:-

1. twenty (20) Working Days after service of a Formal Warning Notice the Supplier has failed to demonstrate to the Customer's satisfaction that:-

(i) the Persistent Breach specified has not continued; and

(ii) the Supplier has put in place measures to ensure that such Persistent Breach does not occur; or

(b) within a three (3) Month period after the date of service of the Formal Warning Notice the Supplier has failed to demonstrate to the satisfaction of the Customer that:

(i) the Persistent Breach specified has not recurred two or more times within such three (3) Month period; and

(ii) the Supplier has put in place measures to ensure that such Persistent Breach does not occur

then the Customer may deem such failure to be a Default which is a material breach of the Contract for the purposes of Clause H2.1 (c).

H2.4 The Customer may terminate this Contract with immediate effect by written notice to the Supplier if it becomes apparent that the Supplier should have been excluded from the procurement process leading to the award of this Contract in accordance with the Public Contracts Regulations.

H2.5 In the event that through any Default of the Supplier, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.6 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Supplier may terminate this Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clauses C3 (Recovery of Sums Due).

**H3 BREAK**

H3.1 The Customer shall have the right to terminate this Contract at any time by giving three (3) Months’ written notice to the Supplier. The Customer may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Supplier during the period of extension.

H3.2 Without prejudice to Clause H3.1, the Customer may by no less than three (3) Months' written notice to the Supplier terminate this Contract where it becomes apparent that:-

1. this Contract has been subject to substantial modification which would have required a new procurement procedure pursuant to the Public Contracts Regulations; or
2. this Contract should not have been awarded for the reasons specified in the Public Contract Regulations.

H3.3 Notwithstanding the provisions of Clauses H3.1 and H3.2, either Party may terminate this Contract in whole or in part by giving the other at least twelve (12) Months' notice in writing, or such other period as may be agreed between the Parties, without the need to give any reason for the termination. Save in relation to any previous Default, in the event of termination pursuant to this Clause H3.3, neither Party shall have any right or rights against the other arising out of or as a consequence of such termination other than as provided for by Clause H4.3.

**H4 CONSEQUENCES OF EXPIRY OR TERMINATION**

H4.1 Where the Customer terminates this Contract under Clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure.

H4.2 Where this Contract is terminated under Clauses H2 (Termination on Default), no further payments shall be payable by the Customer to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with this Contract but where the payment has yet to be made by the Customer), until the Customer has established the final cost of making the other arrangements envisaged under this clause.

H4.3 Subject to Clause H4.4, where the Customer terminates this Contract under Clause H3 (Break), the Customer shall pay to the Supplier the unavoidable direct Losses incurred by the Supplier by reason of such termination provided that the Supplier takes all reasonable steps to mitigate all such Losses. Where the Supplier holds insurance, the Customer shall only have to reimburse the Supplier in respect of those unavoidable direct costs that are not covered by the insurance available. The Supplier shall submit a fully itemised and costed list of unavoidable direct Losses which it is seeking to recover from the Customer, with supporting evidence, of such alleged Losses reasonably and actually incurred by the Supplier as a result of termination under Clause H3 (Break). Any payment paid by the Customer in accordance with this Clause H4.3 shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Customer pursuant to Clause H3. The Supplier shall have no other rights or remedies available to it in respect of any such termination.

H4.4 The Customer shall not be liable under Clause H4.3 to pay any sum which:-

(a) was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

(b) when added to any sums paid or due to the Supplier under this Contract, exceeds the total sum that would have been payable to the Supplier if this Contract had not been terminated prior to the expiry of the Contract Period; or

(c) is a claim by the Supplier for loss of profit, due to early termination of this Contract.

H4.5 On expiry or termination of the Contract or any part thereof:-

(a) the Supplier shall repay at once to the Customer any moneys paid up to and including such date of termination other than moneys in respect of Services or part thereof properly performed in accordance with the Contract; and

(b) the Supplier shall cease to use all of the Customer's Intellectual Property Rights and IP Materials and shall return or destroy as the Customer requires all documents, materials (including those in electronic format) incorporating or referring to the same.

H4.6 Save as otherwise expressly provided in this Contract:-

(a) termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

1. termination of this Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Bribery), D2 (Anti Discrimination), E1 (Data Protection Act), E2 (Confidential Information), E3 (Freedom of Information), E6 (Intellectual Property Rights), E7 (Audit), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H4.7 The Parties shall comply with the provisions set out in Schedule 7.

**H5 RECOVERY UPON TERMINATION**

H5.1 On the expiry, early termination or termination of this Contract for any reason, the Supplier shall:-

(a) immediately return to the Customer all Confidential Information, Personal Data, IP Materials, records and any other documentation and information in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;

(b) immediately deliver to the Customer all Assets (including materials, documents, information and access keys) provided to the Supplier under Clause B8. Such Assets shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

(c) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and

(d) promptly provide all information concerning the provision of the Services including records as referred to in Clause E11 which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which Services have been provided or for the purpose of enabling the Customer or the Replacement Contractor to provide a continued delivery of the Services.

H5.2 If the Supplier fails to comply with Clause H5.1 (a) and (b), the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors premises where any such items may be held.

H5.3 Where the end of the Contract Period arises due to the Supplier’s Default, the Supplier shall provide all assistance under Clause H5.1 free of charge. Where the Contract ends for other reasons the Customer shall pay the Supplier's directly incurred reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

**H6 DISRUPTION**

H6.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Customer, its employees, any Site Management Company, or any other supplier employed by the Customer.

H6.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action is by the Supplier or others for whom the Supplier is responsible, which affects or might affect its ability at any time to perform its obligations under this Contract.

H6.3 In the event of industrial action by the Staff, the Supplier shall seek Approval as to its proposals to continue to perform its obligations under this Contract.

H6.4 If the Supplier’s proposals referred to in Clause H6.3 are considered insufficient or unacceptable by the Customer acting reasonably, then this Contract may be terminated with immediate effect by the Customer by notice in writing.

H6.5 If the Supplier is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business of the Customer, the Supplier may request a reasonable allowance of time.

**H7 REMEDIATION PLAN PROCESS**

H7.1 If the Supplier commits a Default and the Default is in the reasonable opinion of the Customer capable of remedy, the Customer may elect to operate the Remediation Plan Process. If the Customer elects to operate the Remediation Plan Process, the Customer shall serve a Remediation Notice on the Supplier which shall specify the Default in outline and the actions the Supplier needs to take with respect to remedying the Default.

H7.2 Within seven (7) Working Days of receipt of the Remediation Notice, the Supplier shall either:-

1. submit a draft Remediation Plan to the Customer even if the Supplier disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
2. inform the Customer that it does not intend to submit a Remediation Plan in which event the Customer shall be entitled to terminate the Contract by written notice.

H7.3 The Customer shall either approve the draft Remediation Plan within seven (7) Working Days of its receipt pursuant to Clause H7.2 or it shall inform the Supplier within the same time period why it cannot accept the draft Remediation Plan. In such circumstances, the Supplier shall address all such concerns in a revised Remediation Plan which it shall submit to the Customer within three (3) Working Days of its receipt of the Customer’s comments. Once agreed the Supplier shall immediately start work on the actions set out in the Remediation Plan.

H7.4 If, despite the measures taken under Clause H7.3 a Remediation Plan cannot be agreed within twenty (20) Working Days, then the Customer may elect to end the Remediation Plan Process and serve a notice to terminate the Contract.

H7.5 If a Remediation Plan is agreed between the Parties but the Supplier fails to implement or successfully complete the Remediation Plan by the required Remediation Plan completion date, the Customer may:-

1. terminate this Contract by serving a notice of termination; or
2. give the Supplier a further opportunity to resume full implementation of the Remediation Plan; or
3. escalate any issue arising out of the failure to implement the Remediation Plan to the Supplier’s Contract Manager under the dispute resolution procedure set out in Clause I2.

H7.6 If, despite the measures taken under Clause H7.5, the Supplier fails to implement the Remediation Plan in accordance with its terms, the Customer may elect to end the Remediation Plan Process and refer the matter to dispute resolution in accordance with Clause I2 or serve a notice of termination of the Contract.

H7.7 The Customer shall be under no obligation to initiate the Remediation Plan Process if it issues a notice of termination as provided for under this Contract.

**H7A REMEDIATION PLAN IN THE EVENT OF A CRITICAL SERVICE FAILURE**

H7A.1 If the Supplier commits a Critical Service Failure and the Critical Service Failure is in the reasonable opinion of the Customer capable of remedy, the Customer may issue a Remediation Notice in accordance with Clauses H7.1 setting out the details of the Critical Service Failure. The Parties shall arrange and attend a meeting to discuss how the Critical Service Failure shall be remedied, within two (2) Working Days of the Remediation Notice as provided for in this Clause H7A.1.

H7A.2 At the meeting provided for within Clause H7A.1, the Parties shall agree a Remediation Plan in accordance with Clause H7.3 to remedy the Critical Service Failure and draw up a Remediation Plan. If the Parties cannot agree a mutual Remediation Plan, they shall use all reasonable endeavours to agree the same within three (3) Working Days. If a Remediation Plan still cannot be agreed, then Clause H7.4 shall apply.

H7A.3 If the Supplier fails to implement a Remediation Plan in accordance with this Clause H7A, following a Critical Service Failure, Clauses H7.4 – H7.7 shall apply.

**H8 SUSPENSION AND CONSEQUENCES OF SUSPENSION**

H8.1 A suspension event shall have occurred if:-

(a) the Customer reasonably considers that a breach by the Supplier of any obligation under this Contract may result in a material interruption in the provision of any one or more of the Services; or

(b) Clause H8.1 does not apply, but the Customer, acting reasonably, considers that the circumstances constitute an emergency affecting provision of the Services; or

(c) the Supplier is prevented, or will be prevented, from providing the Services due to the termination, suspension, restriction or variation of any Consent

(each a "Suspension Event").

H8.2 Where a Suspension Event occurs the Customer may by written notice to the Supplier and with immediate effect suspend any affected Services, or the provision of any affected Services, until the Supplier demonstrates to the reasonable satisfaction of the Customer that it is able to and shall perform the suspended Services, to the required standard.

H8.3 During the suspension of any Services under Clause H8.2, the Supplier shall comply with any steps the Customer reasonably specifies in order to remedy the Suspension Event, including where the Customer’s decision to suspend pursuant to Clause H8.2 has been referred to dispute resolution under Clause I (Dispute Resolution).

H8.4 During the suspension of any Services under Clause H8.2, the Supplier shall not be entitled to claim or receive any payment for the suspended Services except in respect of:

(a) all or part of the suspended Services the delivery of which took place before the date on which the relevant suspension took effect in accordance with Clause H8.2; and/or

(b) all or part of the Services which the Supplier continues to deliver during the period of suspension in accordance with Clause H8.3.

H8.5 The Parties shall use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users as a result of the suspension of the Services.

H8.6 The Supplier shall indemnify the Customer in respect of any Losses directly and reasonably incurred by the Customer in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning the suspended Services).

H8.7 Following suspension of any Services the Supplier shall at the reasonable request of the Customer and for a reasonable period:

(a) co-operate fully with the Customer and any Replacement Contractor of the suspended Services in order to ensure continuity and a smooth transfer of the suspended Services and to avoid any inconvenience to or risk to the health and safety of Service Users, employees of the Customer or members of the public; and

(b) at the cost of the Supplier:

(i) promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Services by an alternative Replacement Contractor; and

(ii) deliver to the Customer all materials, papers, documents and operating manuals owned by the Customer and used by the Supplier in the provision of the suspended Services.

H8.8 As part of its compliance with Clause H8.7 the Supplier may be required by the Customer to agree a transition plan with the Customer and/or any alternative Replacement Contractor.

H8.9 If it is determined, pursuant to Clause I (Dispute Resolution), that the Customer acted unreasonably in suspending any of the Services, the Customer shall pay to the Supplier any Losses directly and reasonably incurred by the Supplier in respect of that suspension provided always that the Supplier shall at all times take all reasonable steps to minimise and mitigate any Losses for which it is entitled to bring a claim against the Customer pursuant to this Contract.

.

H8.10 During any suspension of any Services the Supplier, where applicable, shall implement the relevant parts of the Business Continuity Plan to ensure there is no interruption in the availability of the other parts of the Services.

**H9** **FORCE MAJEURE**

H9.1 Subject to the remaining provisions of this Clause H9 (and, in relation to the Supplier, subject to its compliance with its obligations in Clause B13, a Party may claim relief under this Clause H9 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

H9.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

H9.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause H9 to the extent that consequences of the relevant Force Majeure Event:

(a) are capable of being mitigated but the Supplier has failed to do so; and/or

(b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.

H9.4 Subject to Clause H9.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

H9.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

H9.6 Where, as a result of a Force Majeure Event:

(a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

(i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clauses H1 and H3; and

(ii) neither Party shall be liable for any Default arising as a result of such failure;

(b) the Supplier fails to perform its obligations in accordance with this Contract:

(i) the Customer shall not be entitled to apply Performance Default Points or withhold and retain any of the Service Charges as compensation to the extent that a Service Failure has been caused by the Force Majeure Event; and

(ii) the Supplier shall be entitled to receive payment of the Service Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

H9.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

H9.8 Relief from liability for the Affected Party under this Clause H9 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause H9.7.

H9.9 In the event that any Force Majeure Event continues to affect the ability of either Party to fulfil their obligations under the Contract for a period of [three (3) Months] or more, either Party may serve notice of termination with immediate effect on the other Party.

**DISPUTES AND LAW**

**I1 GOVERNING LAW AND JURISDICTION**

I1.1 Subject to the provisions of Clause I2, the Customer and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

**I2 DISPUTE RESOLUTION**

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract within twenty (20) Working Days of either Party notifying the other of the dispute. Any dispute shall in the first instance be referred to the Representative of each Party for resolution. If the dispute cannot be resolved by the Representatives of the Parties within ten (10) Working Days after the dispute has been referred to the Representatives, either Party may give notice to the other Party in writing (Dispute Notice) that a dispute has arisen and within five (5) Working Days of the date of the Dispute Notice each Party shall refer the dispute to the Customer’s Contract Manager and the Supplier’s Contract Manager for resolution.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties' Contract Managers pursuant to Clause I2.1 within ten (10) Working Days of the Dispute Notice the Parties shall refer it to mediation pursuant to the procedure set out in Clause I2.5.

I2.4 The obligations of the Parties under this Contract shall not cease, or be suspended or delayed by reference of a dispute to mediation and the Supplier shall comply fully with the requirements of this Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-

(a) A neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within five (5) Working Days from the date of the proposal to appoint a Mediator or within five (5) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.

(b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation providerto provide guidance on a suitable procedure.

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

1. Both Parties agree to co-operate fully with any Mediator appointed and to bear their own costs and one half of the fees and expenses of the Mediator unless otherwise agreed at Mediation.
2. If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

(f) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both Parties.

(g) If the Parties fail to reach agreement in the structured negotiations within twenty (20) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

**IN WITNESS WHEREOF** the Parties hereto have executed this Contract as a Deed with effect from the date first above written.

|  |  |  |
| --- | --- | --- |
| **EXECUTED** (but not delivered until dated)as a deed by affixing the Common Sealof **LINCOLNSHIRE COUNTY COUNCIL****in the presence of:-** | )))))) |  |
|  |  | **…………………………………………****Authorised Officer Signature****Print name:** |

|  |  |  |
| --- | --- | --- |
| **EXECUTED** (but not delivered until dated)as a deed by [INSERT SUPPLIER] acting by:- | ))) |  |
|  | **In the presence of:-** | **………………………………………****Director's Signature****Print name:****Witness Signature****Print name:****Occupation:****Address** |

**SCHEDULE 1**

 **SPECIFICATION**

*[insert description of the Services to be supplied including, where*

*appropriate, the Premises and the Quality Standards]*

**SCHEDULE 2**

 **SUPPLIER SERVICE DELIVERY PLAN**

*[Insert Supplier’s proposals as per Tender Documentation]*

**SCHEDULE 3**

**PAYMENT MECHANISM**

1. The Service Charges shall be as follows

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Customer Site | 6 Monthly Compactor Maintenance Service Charge ("IMS") | 12 Monthly (Annual) Compactor Maintenance Service Charge ("AMS") | Call Out Fee for Repair work on a weekday ("COFWD")  | Call Out Fee for Repair work on a weekend or bank holiday ("COFWB") |
| Boston HWRC |  |  |  |  |
| Bourne HWRC |  |  |  |  |
| Gainsborough HWRC |  |  |  |  |
| Grantham HWRC |  |  |  |  |
| Lincoln HWRC |  |  |  |  |
| Louth HWRC |  |  |  |  |
| Market Rasen HWRC |  |  |  |  |
| Skegness HWRC |  |  |  |  |
| Sleaford HWRC |  |  |  |  |
| Skegness HWRC |  |  |  |  |

|  |  |
| --- | --- |
| Hourly Rate for repair work undertaken on a weekday ("HRWD")  | £ per hour |
| Hourly Rate for repair work undertaken on a weekend or bank holiday ("HRWB") | £ per hour |

|  |  |
| --- | --- |
| **Replacement Parts Basket of Goods** | **Price (£) ("BG")** |
| Magnetic Coded Safety Switch |  |
| Sliding Track Hangers |  |
| Hopper Lid Tension Spring |  |
| Locking Hopper Door Catch |  |
| Limit Switch Arm  |  |
| Mini Relay Control 110v |  |
| Hydraulic Oil Filter |  |
| Single Connecting Link for Drive Chain |  |
| Catenary Double Trolley for Mains Cable |  |
| Hydraulic Oil Grade 46 (per ltr) |  |
| Stop Button for Remote Station |  |
| Mini Panel Key Switch |  |
| Limit Switch Head |  |
| Limit Switch Block (1 N/O 1N/C contacts |  |

 Percentage mark up for Replacement Parts not included above - % ("P")

and shall be payable as set out in this Schedule.

2. The Service Charges shall be calculated using the following formula:

**Service Charge (£) =**

**(relevant IMS x number of times IMS is undertaken in the Month in question) + (relevant AMS x number of times AMS is undertaken in the Month in question) +**

**(HRWD x number of hours which repair work undertaken during a weekday in the Month in question) +**

**(HRWB x number of hours which repair work undertaken during a weekend or bank holiday in the Month in question) +**

**(COFWD x number of call outs attended on a weekday during the Month in question) +**

**(COFWB x number of call outs attended on a weekend or bank holiday during the Month in question) +**

**(BG x number of relevant Replacement Parts in the Replacement Parts Basket of Goods used in the Month in question) + (cost of Replacement Parts not included in the Replacement Parts Basket of Goods + P%)**

**– Performance Deduction**

**SC = (IMS + AMS) + (HRWD + HRWB + COFWD + COFWB + P + BG) - PD**

|  |  |
| --- | --- |
| **IMS** | Is the submitted Interim/6 Monthly Maintenance Service Price for the Month in question |
| **AMS** | Is the submitted annual Monthly Maintenance Service Price for the Month in question |
| **HRWD** | Is the price submitted hourly Rate (Weekday) for Repair Work for the Month in question. |
| **HRWB** | Is the price submitted hourly Rate (Weekend/Bank Holidays) for Repair Work for the Month in question. |
| **COFWD** | Is the price submitted Call Out Fee (Weekday) for Repair work for the Month in question.  |
| **COFWB** | Is the price submitted Call Out Fee (Weekend/Bank Holidays) for Repair work for the Month in question. |
| **P or BG** | Is the Price of any Replacement Parts required either:**P** = Replacement Parts plus the bidders submitted % mark up for the Month in question.**BG**= Items in the basket of Goods the Supplier submitted in their completed ITT. The supplier must submit all invoices for Replacement parts (P) in order to receive payment.  |
| **PD** | Is the Performance Deduction for performance measure failures as calculated in Schedule 4 |

3. The Service Charges, save for the P percentage above, are subject to indexation in accordance with Clause C4. Such indexation shall be calculated as follows:

The indexation base date for the Service Charges shall be October 2020 and the Service Charges shall be indexed on the 1st of April every Contract Year following 1st April 2022.

RPIX Indexation Factor (IF) = XRPIX / YRPIX

Where;

|  |  |
| --- | --- |
| XRPIX | The value published in March/April for the RPIX value for the February immediately preceding the relevant Indexation Date. |
| YRPIX | The value published for RPIX for 1st December 2020 being 296.6. |

The RPIX Indexation Factor (IF) shall be applied annually to the Service Charges (SC) (without regard to the effect of any prior indexing) and accordingly the indexed submitted unit prices for use in the calculations of the Service Charge for the following the Indexation Date shall be calculated as follows;

SC x IF

Following Indexation, the Service Charges shall be amended accordingly following application of this calculation.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Indexable****Item from pricing schedule** | **Index** | **Indexation Base Date** | **Indexation Dates** | **First available dates for Indexation** |
| **Section 1** 6 monthly service | RPIX\* | 1st December 2020  | Every 1st April during the Contract Period | 1st April 2022 |
| **Section 2**Annual Service | RPIX\* | 1st December 2020 | Every 1st April during the Contract Period | 1st April 2022 |
| **Section 3**Weekday call out fee | RPIX\* | 1st December 2020 | Every 1st April during the Contract Period | 1st April 2022 |
| **Section 4**Weekend & Bank Holiday call out fee | RPIX\* | 1st December 2020 | Every 1st April during the Contract Period | 1st April 2022 |
| **Section 5**Hourly rate Weekday | RPIX\* | 1st December 2020 | Every 1st April during the Contract Period | 1st April 2022 |
| **Section 6****Hourly rate Weekend &** Bank Holidays | RPIX\* | 1st December 2020 | Every 1st April during the Contract Period | 1st April 2022 |
| **Section 7A**Basket of Goods | RPIX\* | 1st December 2020 | Every 1st April during the Contract Period | 1st April 2022 |

4. Following instruction to issue an invoice by the Customer in accordance with Clause C2.3, the Supplier shall submit an invoice to the Customer in respect of the Services rendered on a Monthly basis in arrears and not later than 5 Working Days after receiving the instruction to issue an invoice.

5. The Customer shall not be liable to pay for any Service Charges relating to the provision of any Services arising from a misdiagnosis of a Defect by the Supplier and the Supplier shall be liable to the Customer for any costs which the Customer may incur due to such misdiagnosis.

6. Each invoice shall be addressed to Lincolnshire County Council and be submitted by email to: invoices invoices@lincolnshire.gov.uk or any other address as the Customer may notify the Supplier in writing.

7. The Supplier shall supply evidence to the Customer to support the invoice and must be submitted to mike.reed@lincolnshire.gov.uk .The Customer may request any further information it may require in order to satisfy itself that the amount claimed under the invoice is properly due and payable in respect of Services properly delivered in accordance with the requirements of the Contract.

8. In order to receive payment for any Replacement Parts, the Supplier shall submit to the Customer copies of all invoices for such Replacement Parts within the relevant Service Report provided clearly showing the cost to the Supplier for the part and the Percentage mark up for Replacement Parts. All invoices for parts provided shall be submitted with the Suppliers Monthly invoice to the Customer.

9. The Customer shall pay each invoice within thirty (30) days of receipt of an invoice that complies with the requirements set out in this Schedule.

10. In respect of any invoice, the Supplier shall ensure that each invoice:-

(a) clearly displays a valid purchase order number which number must be obtained from the Customer;

(b) only contains one purchase order number relating to the Contract. For the avoidance of doubt, any invoice which contains more than on purchase order number shall be rejected;

(c) includes the Supplier's name, address, contact details;

(d) details the Services which the invoice relates to including the delivery address;

(e) a unique invoice reference number;

(f) is either electronically typed or handwritten but no invoice shall be accepted which has been electronically typed and manually altered, e.g. manually corrected or updated;

(g) is submitted via e-mail to invoices@lincolnshire.gov.uk in PDF or TIF format without security being applied and is sent as a separate file or is sent by post addressed to Lincolnshire County Council, Serco Lincs Invoices, PO Box 7811, Corby, NN17 9HF

(h) which is submitted by e-mail shall only consist of an invoice and no other documentation; and

11. If the Supplier fails to submit an invoice in accordance with paragraph 7 above, no payment shall become due until such time as an invoice has been submitted by the Supplier which conforms in all respects with the requirements set out in paragraph 6 above. For the avoidance of doubt, the Supplier shall not be able to exercise any right under Clause H2.6 until such time as it has submitted an invoice in full compliance with the requirements set out in paragraph 7 above.

12. Where any payment is made by the Customer and it is subsequently established that in the circumstances existing at the relevant time the Customer was only liable under the terms of this Contract to pay the Supplier a lesser sum (or none at all), the Supplier shall repay the amount of the overpayment within five (5) Working Days from receiving notice from the Customer of such overpayment.

13. Notwithstanding anything in this Contract, the Customer reserves the right to not pay for any Replacement Parts in the event that the Supplier does not remove parts from a Compactor in accordance with the Specification and retain and offer up any such part it removes from a Compactor for inspection by the Customer so as to ensure it was removed for good reason and using Good Industry Practice and/or provide documentary evidence required under this Schedule. The Customer's decision as to whether they shall pay for any such Replacement Part shall be final and at their ultimate discretion.

**SCHEDULE 4**

**PERFORMANCE MONITORING**

This Performance Management Framework shall apply in full from the Commencement Date and details the elements of the Services that shall be measured to monitor and to incentivise performance by means of application of Performance Deduction via Schedule 3 (Pricing Schedule) for substandard performance. The Customer shall monitor the Supplier's performance of the Services in accordance with this Contract and shall notify the Supplier of any Service Failure or Critical Service Failure occurring during the provision of the Services.

The Customer's Representative shall confirm to the Supplier's Representative of the Service Failure or Critical Service Failure via email, including what remedial action is required and the level of Performance Deduction that shall apply, in accordance with the Contract, within five (5) Working Days of the Customer becoming aware of the Service Failure.

If a Service Failure as detailed in Table 2 occurs then, subject to the terms of this Performance Management Framework, the Customer shall be entitled to apply the appropriate Performance Deduction to the Service Charges without prejudice to any other remedies the Customer may have. Additionally, the Supplier shall undertake all relevant remedial action identified in the table below. If the Supplier does not complete the required remedial action within the timeframe specified, the Service Failure automatically becomes a Critical Service Failure and shall be dealt with as such.

If a Critical Service Failure as detailed in Table 2 occurs then the Customer shall be entitled to apply the appropriate Service Credit to the Service Charges and may terminate this Contract in accordance with Clause H2.1. However, in the event that the Customer believes, in its absolute discretion, that the Critical Service Failure is capable of remedy, it may implement a Remediation Plan Process in accordance with Clause H7A.

The Customer's Representative shall have up-to-date contact details for the Supplier's Representative or any temporary or permanent replacement including name, work email address and mobile telephone numbers. The Supplier's Representative shall be available to meet the Customer's Representative, or other such duly authorised person, at all reasonable times and shall provide such written reports as the Customer's Representative may reasonably require prior to such meetings or generally.

The Customer may in its sole and absolute discretion grant relief from the application of Performance Deduction or their powers under the Contract, if it is satisfied that the reason for the Service Failure or Critical Service Failure was outside the reasonable control of the Supplier. To claim such relief evidence must be provided by the Supplier to the Customer for each event for which relief is sought. Such evidence must show that the Supplier was unable to mitigate the effects of the reason for the Service Failure or Critical Service Failure as the case may be. The Customer shall review the application for relief and determine if the event causing a Service Failure was or was not outside the reasonable control of the Supplier. The conclusion of the Customer shall be final. The Supplier must apply reasonable measures to mitigate problems/events which affect the delivery of the Service to prevent the occurrence or minimise the amount of Service Failures

The Performance Management Framework shall be reviewed on an annual basis by the Customer and the Supplier with Service Levels being reviewed every six (6) Months. No changes shall be made to the Performance Management Framework except by agreement of both Parties.

| **Service Level** | **Critical Service Failure** | **Service Failure** | **On Target** | **Accumulative £ Service Level Performance Deduction\*** | **Remediation action required** |
| --- | --- | --- | --- | --- | --- |
| The Supplier shall ensure that all repairs are completed and the Compactor is operational within 2 calendar days of diagnosis or at a time and date agreed by the Customer if the repair cannot be completed within two calendar days.  | The Supplier fails to ensure that such repairs are completed to a Compactor and that the Compactor is operational within 3 calendar days of diagnosis, within an alternative agreed timescale with the Customer or fails to undertake the repairs at all | The Supplier fails to ensure that such repairs are completed to a Compactor and that the Compactor is operational within 2 calendar days but ensures all repairs are completed between 2 - 3 calendar days of diagnosis or between 1 and 2 calendar days after an alternative agreed timescale with the Customer  | The Supplier ensures that all repairs are completed and the compactor is operational within 2 calendar days of diagnosis by the time and date agreed with the Customer.  | **SERVICE FAILURE****£82.00 per Occurrence****CRITICAL SERVICE FAILURE****£160.00 per Occurrence** | The Supplier shall also investigate and report back to the Customer the circumstances resulting in the failure Within 5 Working Days with their findings and outlining the measures they have implemented to prevent a repeat occurrence. |
| The Supplier shall attend the relevant Customer Site(s) by the end of the next calendar day of receiving (via telephone) a Defect Notice to complete repairs and breakdowns.  | The Supplier fails to attend the relevant Customer Site(s) after the end of the second calendar day following receipt (via telephone) of a Defect Notice to complete repairs and breakdowns  | The Supplier fails to attend the relevant Customer Site(s) by the end of the next calendar day but attends between the end of the next calendar day to the end of the second calendar day of receiving (via telephone) a Defect Notice to complete repairs and breakdowns | The Supplier attends the relevant Customer Site(s) by the end of the next calendar day following receipt (via telephone) a Defect Notice to complete repairs and breakdowns.  | **SERVICE FAILURE****£82.00 per Occurrence****CRITICAL SERVICE FAILURE****£160.00 per Occurrence** | The Supplier shall also investigate and report back to the Customer the circumstances resulting in the failure Within 5 Working Days with their findings and outlining the measures they have implemented to prevent a repeat occurrence. |
| The Supplier shall, not more than 7 working days following the end of the calendar month, submit to the Customer a Service Report, in electronic format.  |  | The Supplier fails to provide an electronic Service Report within 7 calendar days following the end of a calendar Month.  | The Supplier provides an electronic Monthly Service Report within 7 calendar days following the end of a calendar Month. | **£27.00 per occurrence**  | The Supplier shall provide the Customer with the Monthly Services report by the end of the next Working Day of being informed of the Service Failure. |
| The Supplier shall leave the area of the Customer Site in question, in which they have been working in a clean and tidy condition, to the satisfaction of the Customer, after work has been carried out on the Customer's Compactor.  |  | The Supplier fails to leave the area of the Customer's Site in which they have been working in a clean and tidy condition in the opinion of the Customer.  | The Supplier leaves the area of the Customer's Site in which they have been working in a clean and tidy condition, to the satisfaction of the Customer.  | **£37.00 per Occurrence****And all costs incurred by the Customer engaging a 3rd party to clear the area in question to the Customer's satisfaction.**  |  |
| The Supplier shall prepare and provide the Compactor Maintenance Service Schedules in accordance with the timeframes set out within Clause B1.2 and B1.3 and the Specification  |  | The Supplier fails to issue the proposed Compactor Maintenance Service Schedules for approval in accordance with the timeframes set out within Clause B1.2 and B1.3 and the Specification | The Supplier issues the proposed Compactor Maintenance Service Schedules for approval in accordance with the timeframes set out within Clause B1.2 and B1.3 and the Specification | **£ 40.00 per Occurrence** That the Supplier fails to issue the proposed Compactor Maintenance Service Schedules for approval in accordance with Clause B1.1 | The Supplier shall provide the schedule for Compactor Maintenance Service Schedules for approval by the end of the next Working Day of being informed of the Service failure. |
| Any Compactor Maintenance Service work that cannot be completed on the day of the Maintenance Service shall be carried out at a time and date agreed with the Customer.  |  | The Supplier fails to return to the relevant Customer Site at the time and date agreed with the Customer to compete the Service Maintenance work. | The Supplier returns to the relevant Customer Site at the time and date agreed with the Customer to compete any Service Maintenance work. | **£ 116.00 per Occurrence** | The Supplier shall return to the relevant Customer Site by the end of the next Working Day of being informed of the Service Failure by the Customer. The Supplier will also investigate and report back to the Customer the circumstances resulting in the failure Within 5 Working Days with their findings and outlining the measures they have implemented to prevent a repeat occurrence. |

**SCHEDULE 5**

**KEY PERSONNEL**

**PART 1**

**Customer’s Key Personnel**

|  |  |
| --- | --- |
| **Name** | **Job Title** |
| **Mike Reed**  | Customer’s Representative |
| **John Coates** | Customer’s Contract Manager |

**PART 2**

**Supplier’s Key Personnel**

|  |  |
| --- | --- |
| **Name** | **Job Title** |
|  | Supplier’s Representative |
|  | Supplier’s Contract Manager |

**SCHEDULE 6**

**DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN**

1. **CONTENT OF THE DISASTER RECOVERY AND BUSINESS CONTINUITY PLAN**

1.1 The Supplier shall ensure that the Disaster Recovery and Business Continuity Plan includes:-

1. details of how the Supplier shall implement the Disaster Recovery and Business Continuity Plan;
2. details of how the Disaster Recovery and Business Continuity Plan inter-operates with any other disaster recovery and business continuity plan of the Customer (as notified by the Customer from time to time);
3. details as to how the invocation of any element of the Disaster Recovery and Business Continuity Plan may impact on the operation of the Services and a full analysis of the risks to the operation of the Services;
4. identification of all reasonably possible failures of or disruptions to the Services;
5. In respect of any software used in the Services, the back-up methodology, data verification procedures, hardware configuration details, network planning and invocation rules and procedures, data centre site audits, possible areas where system critical elements can be ''dual sourced'' so as to eliminate or minimise single points of failure and business continuity maintenance;
6. identification of all potential disaster recovery scenarios;
7. provision of appropriate levels of spares, maintenance equipment and test equipment;
8. responsibilities of the Sub-Contractors in the event of a Disaster;
9. Service Levels that the Supplier shall have to comply with in the event of a Disaster; and
10. Customer obligations and dependencies.

1.2 The Supplier shall ensure that the Disaster Recovery and Business Continuity Plan identifies and details the processes and activities which it shall implement upon the occurrence of business-critical emergency situations. In particular, the Disaster Recovery and Business Continuity Plan shall include:

1. identification of Service priorities in the event of a Disaster;
2. risk analysis of key business risks (including failure scenarios, assessments, identification of single points of failure and ways to manage such failure and business impact analysis). Key business risks could include the loss of Staff, Key Personnel, Sites, key resources and key Sub-Contractors and/or suppliers;

(b) details of business processes, procedures (including procedures for activation, escalation and recovery) and responsibilities;

1. a communications strategy for Staff, the media and key internal and external stakeholders;
2. identification of key internal and external interdependencies;
3. identification of essential resources and Equipment needed during a Disaster;
4. a contact list that contains details of all Staff, Sub-Contractors and anyone to be relied upon by the Supplier to provide the Services; and

(d) procedures for reverting to normal Service delivery.

[**Top**](http://ipandit.practicallaw.com/0-202-4551#top)

1. **REVIEW AND AMENDMENT OF THE DISASTER RECOVERY AND BUSINESS**

**CONTINUITY PLAN**

The Disaster Recovery and Business Continuity Plan shall be reviewed by the Customer and the Supplier annually, or at such other times as may be requested by the Customer or the Supplier.

**SCHEDULE 7**

**EXIT STRATEGY REQUIREMENTS**

1. Without prejudice to the provisions set out in the Contract (including clause B7 and Section H) upon notification of this Contract terminating, howsoever caused, or twelve (12) Months prior to the expiry of this Contract, the Parties shall meet to discuss a timetable for drawing up and shall draw up a handover plan covering the performance of the obligations of both Parties during the handover period. In any event, the Supplier shall, at no cost to the Customer, provide such cooperation, information and assistance to the Customer as may be reasonably required by the Customer to transfer and to enable a smooth migration of the Services being supplied by the Supplier including enabling the Customer and/or a Replacement Contractor to perform services the same as or substantially the same as the Services in a similar manner as required under this Contract.
2. The Supplier and the Customer shall use all reasonable endeavours to ensure all appropriate arrangements are put in place to give effect to the transition of the Services to the Customer or a Replacement Contractor.
3. The Supplier agrees that if it is requested by the Customer it shall use all reasonable endeavours to assign or novate any then existing contracts which the Supplier has entered into with third parties in connection with the provision of the Services including the leasing of any equipment used in the delivery of the Services to the Customer or to any Replacement Contractor.
4. The Supplier shall not in the twelve (12) Month period prior to the expiry of this Contract (or such period remaining where a notice of termination has been issued) (the "Applicable Period") in relation to the Services except with the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed:
	1. incur any expenditure or enter into any commitments other than in the ordinary course of trading;
	2. dispose of or agree to dispose of or grant any option in respect of any part of any land, buildings, equipment, spare parts, tools books, records, revenues, Intellectual Property Rights (excluding those assets which the Customer is the full legal and beneficial owner of) other than stock in the ordinary course of trading;
	3. materially vary the terms of any contracts with any provider of goods and/or services already entered into;
	4. enter into any long-term (being twelve (12) Months or longer), unusual or abnormal contract or commitment;
	5. enter into any leasing, hire purchase, contract hire or other agreements or arrangements for payment on deferred terms;
	6. grant or issue or agree to grant or issue any mortgages, charges, debentures or other securities for money or redeem or agree to redeem any such securities or give or agree to give any guarantees or indemnities or, without prejudice to the foregoing generality, create or permit to subsist any other encumbrance over all or any of its present or future incomes or assets affecting this Contract and/or the provision of the Services;
	7. permit any of its insurances to lapse or do anything which would make any policy of insurance void or voidable;
	8. in any way depart from the ordinary course of its day to day business either as regards the nature or scope or the manner of conducting the same;
	9. pay any fees or commissions to any persons other than fees payable on arm's length terms to third parties who have rendered bona fide service or advice required in the ordinary course of business;
	10. release, waive or modify any warranty or guarantee given by any supplier of goods or services;
	11. cause or permit any item comprised in the records relating to the Services to be removed or destroyed or any programs or data held on the computer systems of the Supplier and relating to the Services to be removed or deleted except for the deletion of Personal Data where required to ensure compliance with Data Protection Legislation or for the efficient running of the computer system in question after satisfactory back-up copies have been made and securely stored off-site;
	12. terminate the employment of any of the Relevant Employees for any reason whatsoever without first obtaining the consent of the Customer to such termination save where, in the reasonable opinion of the Supplier, termination is justified for cause due to the actions of any such of the Relevant Employees;
	13. alter or change in any way any of the terms and conditions of employment of any of the Relevant Employees whether with or without the consent of the Relevant Employees other than for wage or salary awards which are in line with those offered generally for similar individuals within the Supplier's workforce or as is required by law (for the avoidance of doubt, the Supplier shall provide upon request by the Customer evidence that any such wage or salary award is in line with those offered generally for similar individuals);
	14. relocate or assign to new duties any of the Relevant Employees, or assign to the provision of the Services any employee not so assigned at the commencement of the Applicable Period, or increase to any significant degree the proportion of working time spent on the Services by any such employee, without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed; or
	15. make any other alterations to the structure or composition of the Relevant Employees which are intended to or which may preclude the application of the Regulations upon the resumption of service by the Customer or Replacement Contractor.
5. - Appendices

**Appendix One** – Compactor Maintenance Service sheets (6 monthly and Annual) (Thetford Compactors)

**Appendix Two** – Compactor Model Numbers

**Appendix Three** – Monthly Service Report

**Appendix Four** – Repairs Undertaken 2018/19

**Appendix Five** – Compactor Defect Notice

Appendix One – COMPACTOR MAINTENANCE Service sheets (6 montly and annual)

**SERVICE REFERENCE NO: \_\_\_\_\_\_\_\_\_\_\_ COMPACTOR DEFECT NOTICE NO: \_\_\_\_\_\_\_\_\_\_\_\_\_**

**SERVICE DETAILS: COMPACTOR DETAILS:
6 MONTHLY SERVICE** SERIAL NO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­­­­­­­­ LOCATION: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATE OF SERVICE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ARRIVAL TIME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_ DEPARTURE TIME: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

ENGINEER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signature of Engineer/LCC employed to confirm works undertaken**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |
| --- |
| **6 MONTHLY SERVICE *CHECK LIST******(ADJUST GREASE AS NECESSARY)*** |
| **MECHANICAL** |
| **1** | Check guide blocks and pins |  |
| **2** | Check doors and safety devices for alignment |  |
| **3** | Check cover plates and guards secure |  |
| **4** | Check rigging screws and holding down bolts |  |
| **5** | Check platen, scrapper blade and pin flaps |  |
| **6** | check discharge door (where applicable) |  |
| **HYDRAULICS** |
| **7** | Check hydraulic cylinders for oil leaks |  |
| **8** | check hydraulic hoses and fittings |  |
| **9** | Check condition and level of hydraulic oil |  |
| **ELECTRICS** |
| **10** | Check operation and setting of all safety switches |  |
| **11** | Check operation of control panel and remotes |  |
| **12** | check operation and setting of all control switches |  |
| **13** | Check motor, coils and pressure switches |  |
| **14** | check all lamp filaments |  |
| **LOADER (*where applicable)*** |
| **15** | Check hydraulic cylinders for oil leaks |  |
| **16** | Check hydraulic hoses and fittings |  |
| **17** | check directional valve correct function |  |
| **18** | Check cylinder and frame bushes and pins for wear |  |
| **19** | check condition of frame and cart locating arms |  |
| **20** | Check fences, gate safety switches and lock |  |
| **TRAVERSING (*where applicable)*** |
| **21** | Check drive chain and tie bars |  |
| **22** | check wheel bearings |  |
| **23** | Check electrical controls for correct operation |  |
| **24** | Check electrical motor |  |
| **DOCKING (*where applicable)*** |
| **25** | Check correct function of directional valve |  |
| **26** | check hydraulic cylinders for oil leaks |  |
| **27** | check hydraulic hoses and fittings |  |
| **28** | Check slide blocks for wear |  |

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

**SERVICE REFERENCE NO: \_\_\_\_\_\_\_\_\_\_\_ COMPACTOR DEFECT NOTICE NO:\_\_\_\_\_\_\_\_\_\_\_**

**SERVICE DETAILS: COMPACTOR DETAILS:
ANNUAL** SERIAL NO: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LOCATION: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATE OF SERVICE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ARRIVAL TIME : \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DEPARTURE TIME: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

ENGINEER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signature of Engineer/LCC employed to confirm works undertaken**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |
| --- |
| **ANNUAL SERVICE *CHECK LIST - (ADJUST GREASE AS NECESSARY)*** |
| **MECHANICAL** |
| **1** | Check guide blocks and pins |  | **29** | check pins and bushes for excessive wear |  |
| **2** | Check doors and safety devices for alignment |  | **30** | Check condition of charge area |  |
| **3** | Check cover plates and guards secure |  | **31** | check condition of hopper |  |
| **4** | Check rigging screws and holding down bolts |  | **32** | check condition of handrails and support legs |  |
| **5** | Check platen, scrapper blade and pin flaps |  | **33** | Check condition of warning / instruction labels |  |
| **6** | check discharge door (where applicable) |  | **34** | check damping hooks |  |
| **HYDRAULICS** |
| **7** | Check hydraulic cylinders for oil leaks |  | **35** | check oil strainers and filters |  |
| **8** | check hydraulic hoses and fittings |  | **36** | Check hydraulic pressure |  |
| **9** | Check condition and level of hydraulic oil |  | **37** | check action of spools in directional control valves |  |
| **ELECTRICS** |
| **10** | Check operation and setting of all safety switches |  | **38** | check control switch barrels for wear |  |
| **11** | Check operation of control panel and remotes |  | **39** | check contacts of contractors for wear |  |
| **12** | check operation and setting of all control switches |  | **40** | Check panel wiring |  |
| **13** | Check motor, coils and pressure switches |  | **41** | Remove motor cover plate and check connectors |  |
| **14** | check all lamp filaments |  |  |
| **LOADER (*where applicable)*** |
| **15** | Check hydraulic cylinders for oil leaks |  | **42** | check pressures on relief valve |  |
| **16** | Check hydraulic hoses and fittings |  | **43** | Check hydraulic cylinder relief valve operation |  |
| **17** | check directional valve correct function |  | **44** | Check pins and bushes for excessive wear |  |
| **18** | Check cylinder and frame bushes and pins for wear |  |  |
| **19** | check condition of frame and cart locating arms |  |
| **20** | Check fences, gate safety switches and lock |  |
| **TRAVERSING (*where applicable)*** |
| **21** | Check drive chain and tie bars |  | **45** | Check gear box drive gears and locks |  |
| **22** | check wheel bearings |  | **46** | Check gear box oil level |  |
| **23** | Check electrical controls for correct operation |  |  |
| **24** | Check electrical motor |  |
| **DOCKING (*where applicable)*** |  |  |  |
| **25** | Check correct function of directional valve |  | **47** | Check pressures on relief valve |  |
| **26** | check hydraulic cylinders for oil leaks |  | **48** | check hydraulic cylinder relief valve operation |  |
| **27** | check hydraulic hoses and fittings |  | **49** | check pins and bushes for excessive wear |  |
| **28** | Check slide blocks for wear |  |  |

Appendix Two – Compactor Model numbers

|  |  |  |
| --- | --- | --- |
| **Customer Sites** | **Address** | **Number of Compactors and Model** |
| Boston  | Bittern Way, Boston, Lincolnshire, PE21 7RQ | 1. x Thetford Traversing Compactors

T3XLT-30714-0218T3XLT-30717-0218T3XLT-30718-0218 T3XLT-30721-0218T3XLT-30723-0218T3XLT-30724-0218 |
| Bourne  | South Fen Road, Bourne, Lincs, PE10 0DN | 1. x Thetford Traversing Compactors

T3XLT-1701-1215T3XLT-1702-1215T3XLT-1703-1215 T3XLT-1704-0217T3XLT-1693 |
| Gainsborough | Long Wood Rd, Gainsborough, DN21 1QB | 4 x Thetford Traversing CompactorsT3XLT-29524-0215T3XLT-29525-0215T3XLT-29526-0215T3XLT-29527-02151 x Static compactor  |
| Grantham | Mowbeck way, Grantham, Lincs, NG31 7AH | 5 x Thetford Traversing CompactorsT3T-1664 T3T-1663T3T-1686T3T-1687T3T-1593 |
| Lincoln | Great Northern Terrace, Lincoln, Lincs, LN5 8LG | 1. x Thetford Traversing Compactors

T3XLT-1665T3XLT-1666T3XLT-1672T3XLT-1679T3XLT-1680T3XLT-1681T3XLT-1682 |
| Louth | Bolingbroke Road, Louth, Lincs, LN11 0WA | 6 x Thetford Traversing CompactorsT3XLT-1649T3XLT-1650T3XLT-1661T3XLT-1662T3XLT-1669T3XLT-1671 |
| Market Rasen | Gallamore Lane Industrial Estate, Lincs, LN8 3HA | 5 x Thetford Traversing CompactorsT3XLT-1670T3XLT-1673T3XLT-1674T3XLT-1675T3XLT-1676 |
| Skegness | Warth lane, Skegness, Lincs, PE25 2JS | 5 x Thetford Traversing CompactorsT3T-1667T3T-1668T3T-1683T3T-1684T3T-1685 |
| Sleaford | Pride Parkway, Sleaford, Lincs, NG34 8GL | 5 x Thetford Traversing CompactorsT3XLT-1688T3XLT-1689T3XLT-1690T3XLT-1691T3XLT-1692 |
| Spalding | West Marsh Road, Spalding, Lincs, PE11 2BB | 6 x Thetford Traversing CompactorsT3T-1539T3T-1537T3T-1590T3T-1591T3R+T5-26786T3R+T5-26791x Thetfords Static Super short compactors  |

Appendix Three – Monthly Service Report

The Supplier shall not more than 7 calendar days following the end of the calendar month, submit to the Customer a Monthly Service Report, in electronic format.

Once the Customer is satisfied with the Monthly Service Report, not more than 10 calendar days following the receipt of the Monthly Service Report, the Customer will instruct the Supplier to submit an invoice in accordance with the Payment Schedule.

This Service Report shall include for the month in question;

* The calculation of the monthly Service Charge (SC) in accordance with the Pricing Schedule.
* A summary of the Supplier’s performance against each of the Performance Standards specified in the Contract and Performance Management Arrangements. This must include an itemised list (as per Table 1 of Section 3b) of performance standards and highlighted where performance standards are below the required standard.
* The Management information to be supplied by the Supplier to the Customer;
1. A running log of Maintenance Interval Services carried out, stating if it’s a 6 months or annual service with machine number and location.
2. Number of Defect Notices issued for each Compactor per Customer Sites.
3. Nature of the Defect for each compactor per Customer Sites.
4. Total number of Hours spend on Repair work per compactor for each Customer sites by Defect Notice
5. Total number of days each Compactor was non- operational per Customer Sites.
6. Parts replaced (with costs) on each Compactor per Customer Sites.
7. Total Number of Call outs for repair work to Compactors per Customer Site.

APPENDIX FOUR– LIST OF REPAIRS UNDERTAKEN 2018/2019

|  |  |  |
| --- | --- | --- |
| **Month**  | **HWRC** | **Repair Work** |
| Mar-18 | Louth | Repair |
| Apr-18 | GNT | grinding ramp, welding and lating on No 2 compactor at GNT |
| May-18 | Grantham | wielding and plating on No 3 compactor at Grantham |
| May-18 | GNT | repairs to compactor No 2 at GNT |
| Jun-18 | Skegness | repairs to compactor rails at Skegness |
| Jun-18 | GNT | A-Magnetic code switch |
| Jun-18 | GNT | Hose, Hydraulic Oil  |
| Jun-18 | Grantham | Repair |
| Jun-18 | Skegness | Repair |
| Jun-18 | Spalding | A-Magnetic code switch |
| Jul-18 | GNT | repair to compactor No 2 from GNT |
| Jul-18 | Spalding | repairs to compactor No3 at Spalding |
| Jul-18 | Grantham | work on No 3 compactor at Grantham  |
| Jul-18 | Boston | Repair |
| Jul-18 | Louth | Limit Switch Head  |
| Jul-18 | Louth | Repair |
| Aug-18 | Skegness | work on compactor track at Skegness |
| Aug-18 | Louth | Repair |
| Aug-18 | Skegness | Track hanger  |
| Aug-18 | Skegness | Repair |
| Aug-18 | Grantham | Repair |
| Sep-18 | Market Rasen | wielding on No compactor at Rasens  |
| Sep-18 | Spalding | Repair |
| Sep-18 | GNT | A-Magnetic code switch |
| Sep-18 | GNT | Repair |
| Oct-18 | GNT | repair to compactor No 2 from GNT |
| Oct-18 | GNT | repair to compactor No 7 GNT |
| Oct-18 | GNT | more repairs to compactor No2  |
| Oct-18 | GNT | A-Magnetic code switch |
| Oct-18 | Grantham | Track Hangers  |
| Oct-18 | GNT | A-Magnetic code switch |
| Oct-18 | GNT | A-Magnetic code switch |
| Oct-18 | Skegness | Repair |
| Oct-18 | Louth | Repair |
| Oct-18 | Louth | Repair |
| Oct-18 | Louth | Repair |
| Nov-18 | GNT | wielding flaps at GNT |
| Nov-18 | Louth | compactor flaps wielded at Louth |
| Nov-18 | Bourne | repairs to No 4 & 3 Compactor at Bourne |
| Nov-18 | Grantham | repairs to compactor No3 at Grantham |
| Nov-18 | Boston | Repair |
| Nov-18 | Grantham | Hydraulic oil Ltrs  |
| Nov-18 | Skegness | Bolts |
| Nov-18 | Louth | 185mmx1500mm Metal Plate  |
| Dec-18 | Louth | work on No5 Compactor at Louth |
| Dec-18 | Market Rasen | work o No 5 Compactor Rasens |
| Dec-18 | Market Rasen | repair to No 5 compactors at Rasen |
| Dec-18 | Grantham | Grantham No 4 Compactor  |
| Dec-18 | GNT | Repair |
| Dec-18 | Spalding | Repair |
| Dec-18 | Grantham | TI Catenary double trolley |
| Jan-19 | Market Rasen | bent flaps on No1 compactor at Rasens |
| Jan-19 | Spalding | repairs to compactors 4&5 at Spalding |
| Jan-19 | Louth | A-Magnetic code switch |
| Jan-19 | Skegness | Track hanger |
| Jan-19 | Sleaford | Repair |
| Feb-19 | GNT | repairs to No 2 Compactor at GNT |
| Feb-19 | Louth | repairs to No 2 compactor at Louth |
| Feb-19 | Louth | repairs to compactors No 1 & 2 at Louth |
| Feb-19 | Louth | repairs to compactor No 2 at Louth |
| Feb-19 | Market Rasen | repair work on compactor No1 at Rasens  |
| Feb-19 | Market Rasen | repairing flaps on Compactor 1 at Rasens  |
| Feb-19 | Market Rasen | cutting off and replacing old mesh and top plates |
| Feb-19 | Market Rasen | adjusting springs on compactor 1  |
| Feb-19 | GNT | A-Limit Switch Head zcke05 H29 |
| Feb-19 | GNT | Repair |
| Feb-19 | Louth | Oil Hydraulic oil and 1/4 x 85 Hose  |
| Feb-19 | Louth | Repair |
| Feb-19 | Spalding | Repair |
| Feb-19 | Skegness | A-Button ZA2 BS 54 Stop remote |
| Feb-19 | Skegness | A-Limit Switch head  |
| Feb-19 | GNT | A-Limit Switch-arm (extendable) |
| Feb-19 | GNT | Repair |
| Mar-19 | Spalding | repairs to No 2 Compactor at Spalding |
| Mar-19 | Spalding | measuring compactor doors and marking out new plates for No 2 compactor at Spalding |
| Mar-19 | Spalding | making new spring anchor plates for No 2 compactor at Spalding  |
| Mar-19 | Spalding | repair wing doors |
| Mar-19 | Spalding | repairs to No 2 Compactor at Spalding |
| Mar-19 | Spalding | jet washing Spalding compactor |
| Mar-19 | GNT | Repair |
| Mar-19 | Louth | Repair |
| Mar-19 | Louth | Repair |
| Mar-19 | Skegness | Repair |
| Mar-19 | GNT | Repair |
| Mar-19 | GNT | A-Magnetic code switch |
| Mar-19 | Louth | A-Relay Control Mini.SY41  |
| Apr-19 | Skegness | Repair |
| Apr-19 | Rasens | Repair |
| Apr-19 | Rasens | Magnetic Switch; A Frames; Delivery  |
| Apr-19 | Gainsborough | A-Magnetic code switch |
| Apr-19 | Spalding | Repair |
| Apr-19 | Boston | Repair |
| Apr-19 | Bourne | A-Chain single connecting link |
|   | Louth | Limit Switch Head  |

APPENDIX FIVE – COMPACTOR DEFECT NOTICE

**Compactor Defect Notice**

**Compactor Defect Notice Reference: ­­­­­­­ ­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**To be completed by the Site Supervisor/Site Inspector**

|  |  |  |  |
| --- | --- | --- | --- |
| **Site Name**  | **Site Supervisor**  | **Name of Member of staff reporting Defect** | **Time / Date**  |
|  |  |  |  |

|  |
| --- |
| **Nature of the Defect** (*please do not diagnose the defect, just enter a description for example oil leak from engine)*  |

**To be completed by the Supplier**

|  |
| --- |
| **Diagnosis of Defect:****Time diagnosis started / ended**: |
| **Parts requiring replacement:** | **Estimated time required to complete the repair:**  |
| **Does the Compactor need removing from Site for the repair? Y/N** | **Name of Supplier's staff making the Diagnosis:** |

|  |
| --- |
| **Detail Repair Work carried out:****Time Repair Work Started: \_\_\_\_\_\_\_\_\_\_\_\_ Time Repair Work Ended: \_\_\_\_\_\_\_\_\_\_\_\_** |
| **Parts replaced:** | **Name of Supplier's Staff who carried out the Repair Work:** |

**(Intentionally Blank)**