AGREEMENT

2020 – [YEAR]

for the Recovery, Storage and Disposal of

(i) Abandoned Vehicles and

(ii) Unlicensed Vehicles

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CONDITIONS OF CONTRACT

1. Parties

1.1 THE BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL of the Town Hall, Bourne Avenue, Bournemouth, Dorset BH2 6DY (the Council); and

1.2 the contractor

each referred to as a "Party" and together the "Parties".

2. Background

2.1 The Council is the waste collection and disposal authority in the area of the Bournemouth, Christchurch and Poole Council (BCP Council) for the purposes of the Environmental Protection Act 1990 and has a duty under the Refuse Disposal (Amenity) Act 1978 to arrange for the removal and disposal of vehicles abandoned in their area.

2.2 The Council is an Authorised Person for the purposes of (and as defined in) The Vehicle Excise Duty (immobilisation, Removal and Disposal of Vehicles) Regulations 1997 (as amended) and has a duty to deal with unlicensed vehicles in 'relevant' places (as defined in the regulations).

2.3 The Council has procured a Contract for the provision of both the above Services herein specified and the Contractor, who warrants below that it has sufficient knowledge and understanding of the Services, is willing and able to perform all of the Services in accordance with the Terms and Conditions of this Contract (T&C's).

3. Definitions and Interpretation

3.1 Words and expressions in these T&Cs have meanings as assigned in round brackets and those defined in the Specification will have the same meaning in these T&Cs. In addition, except where the context otherwise requires, words and expressions will have the meanings set out in Schedule 1 (Definitions).

4. Contract Term

4.1 The Contract shall commence on the Commencement Date and remain in effect for a period of three (3) years unless extended or terminated in accordance with the provisions of the Contract.

5. Contract Extension

5.1 The Council reserves options to extend as described in the Invitation to Tender.

6. Council

6.1 The Transport Network, Growth and Infrastructure of Bournemouth, Christchurch and Poole Council (and its legal representatives when so instructed) shall be the legal point of contact between the Council and the Contractor.

7. Representatives of the Parties

7.1 The Council may from time to time appoint, remove and replace as the Council’s Representative either a named person or the holder of a named office which shall in the first place be the Head of Traffic Management.

7.2 The Contractor shall appoint a person to have responsibility for managing its delivery of the Services. Such person shall act as Contractor's Representative and shall be responsible for ensuring that the Services are delivered, to the satisfaction of the Council at all times.

7.3 The Contractor warrants that the Contractor's Representative shall be a fit and proper person with suitable

and current qualifications, knowledge, skills, experience, aptitude, willingness and enthusiasm to enable him to manage the Contract for the Contractor. He shall receive and act diligently upon instructions, notices and information issued by the Council's Representative from time to time in keeping with the proper performance of the Contract.

7.4 The Contractor's Representative shall give sufficient time to supervise the delivery of the Service and monitor the performance of the workforce, to ensure Contractor's compliance with the Contract. He may appoint assistants, as required, to act for him generally or specifically in connection with the Contract.

7.5 The Contractor's Representative and certain of his assistants shall be contactable by telephone at any time during and outside of the normal working days and hours, such that at any time at least two persons are available in connection with the Contract.

7.6 The Representatives of the Parties shall hold regular meetings in order to review the working of the Contract. The main purposes of these meetings is to (i) identify any way in which a Party might be, or become, in breach of its obligations and to discuss any necessary remedial action required; and (ii) to identify areas for improvement or development of the Services to enable the Council to better procure the successor contract(s). The Parties shall, through their Representatives endeavour to resolve informally any problem arising as perceived by either party or its Representative in the first instance.

8. Notices

8.1 A notice to be given by any Party under the Contract must be in writing.

8.2 Any demand, notice or other communication to be given by any Party under the Contract will be sufficiently served if served personally on the addressee, or if sent by prepaid first class recorded delivery post or facsimile transmission to the registered office or last known address of the Party to be served therewith and if so sent will, subject to proof to the contrary, be deemed to have been received by the addressee on the second business day after the date of posting or on successful transmission, as the case may be, without prejudice to the validity of any other equally effective method of service. Such communication that is served on any Representative appointed under Clause 7 of these Conditions will be deemed to be validly served on the Party who appointed the Representative.

8.3 A copy of any notice or instruction received by the Contractor from any statutory or Regulatory Body which in any way relates to the ability of the Contractor to supply the Service under the Contract must be passed to the Council's Representative within 24 hours of receipt.

9. Assignment, Novation and Sub-Contracting

9.1 The Contractor must not transfer, assign or novate the Contract or any part thereof without the prior written consent of the Council's Representative.

9.2 The Contractor must not sub-contract the provision of the Service or any part thereof without the previous written consent of the Council's Representative, which shall not be unreasonably withheld. Notwithstanding such consent the Contractor shall not be relieved from any liabilities or obligations under the Contract. The Contractor will be responsible for all acts, omissions, breaches and neglect of any sub-contractor, its employees or agents in all respects as if they were the acts, omissions, breaches and neglect of the Contractor.

9.3 Where consent to sub-contracting is granted, the Contractor shall provide each sub-contractor with a full set of the unpriced Contract documentation. If required, the Contractor shall satisfy the Council's Representative that it has obtained a written undertaking from the sub-contractor that the sub-contractor is familiar with the documentation and will perform the Service fully in conformity with the Contract.

9.4 The Council shall be entitled to:

(i) assign, novate or otherwise dispose of their rights and obligations under the Contract or any part thereof to a statutory or other public body; or

(ii) novate the Contract to any other body established by the Crown or under statute to substantially perform

any of the functions that previously had been performed by the Council.

10. Contract Documents

10.1 No deletion from, addition to, or alteration of the Contract Documents will be valid or be of any effect unless agreed in writing and signed by the Parties.

10.2 Copyright to the Contract Documents will vest in the Council.

10.3 The Contractor agrees that it has obtained all information necessary for the purposes of entering into the Contract and satisfied itself by its own investigations and at its own expense the accuracy of any information supplied by the Council. The Council accept no responsibility for any inaccurate information obtained by the Contractor. The Council will not accept any liability or authorise any modification to the Contract Documents made necessary by the Contractor's failure to inspect sites or documents or to raise queries prior to entering into the Contract.

10.4 Except where otherwise provided, all elements of the Contract Documents are to be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be resolved in the first place by the Council's Representative who shall thereupon issue to the Contractor appropriate instructions in writing and the Contractor shall carry out and be bound by such instructions. If any such instruction changes the basis upon which the Contractor entered into the Contract so as to render any price inappropriate, the said instruction shall be treated as a Variation under Clause 34 of these Conditions.

10.5 In the event of any inconsistency between these Conditions of Contract and any other documents forming part of the Contract Documents, the Conditions of Contract shall be deemed to prevail.

10.6 This Contract constitutes the entire understanding and agreement relating to the subject matter of the Contract and, save as expressly referred to or incorporated by reference, supersedes all prior negotiations, submissions or understandings with respect to this subject matter, except that nothing in this Condition shall exclude or restrict liability for fraudulent or fundamental misrepresentations.

10.7 If any part of the Contract is or becomes or is declared void, invalid, illegal or unenforceable for any reason whatsoever including, but without prejudice to the generality of the foregoing, by reason of the provisions of any legislation or any other provisions having the force of law or by means of any decision of any Court or other body or authority having jurisdiction over the Parties or the Contract, then the remaining parts of the Contract will continue in full force and effect with such amendments as may be agreed between the Parties to ensure that the balance of obligation remains as far as possible the same as under the Contract as at the date of signature.

10.8 Each Party shall bear its own costs in connection with the preparation and execution of the Contract.

11. Waiver

11.1 No relaxation, forbearance, delay or indulgence by any Party in enforcing against another Party any of the terms or conditions of this Contract nor the granting of time by any Party to another shall prejudice, affect or restrict the rights and powers of either Party.

11.2 No waiver of any term or condition of this Contract shall be effective unless made in writing and signed by a person authorised to represent the Party against which enforcement of the waiver is sought. The waiver of any breach of any term or condition of this Contract shall not be construed as a waiver of any subsequent breach of condition whether of the same or a different nature.

11.3 Failure by the Council at any time to enforce the provisions of the Contract or to require performance by the Contractor of any of the provisions of the Contract will not be construed as a waiver of, or as creating estoppels in connection with, any such provision. Failure will not affect the validity of the Contract or any part thereof or the right of the Council to enforce any provision in accordance with its terms.

12. General Obligations of the Contractor

12.1 The Contractor undertakes during the Contract Term to provide the Service in accordance with the Contract Documents. The Contractor will be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Contract Price.

12.2 During the Contract Term the Contractor must provide the Service in a proper, skillful and workmanlike manner in accordance with the Contract Documents and to the entire satisfaction of the Council's Representative acting reasonably.

12.3 The Contractor shall employ sufficient technically competent persons fully instructed, supervised and skilled at all times, including but not limited to periods of staff absence or holidays, and provide sufficient plant, equipment and facilities to ensure that it can comply with its obligations under the Contract.

12.4 The Council's Representative may from time to time review the Service Delivery Plan which he may consider to be in any way unsatisfactory. The Contractor shall supply, at no cost to the Council, a Service Delivery Plan that meets the revised requirements of the Council's Representative, provided always that he is not acting capriciously, vexatiously or unreasonably.

12.5 The Contractor shall ensure that each person employed or engaged by it under this Contract shall be fully instructed with regard to the Service required by the Contract and in particular be aware of: -

(i) the task or tasks such person has to perform;

(ii) all relevant provisions of the Contract relative to the task or tasks to be performed;

(iii) all relevant policies, rules, procedures and standards required by the Council;

(iii) all relevant rules, procedures and statutory requirements and legislation;

(iv) the need to maintain the highest standards of courtesy and consideration in providing the Service;

(v) the need to recognise situations of potential danger or personal injury to any person at all times and where possible without personal risk make safe such situations, and ensure that such occurrences shall be reported to the Contractor's Representative and the Council's Representative and properly recorded;

(vi) the Council's requirement that where the Contractor or any of its employees become aware of any incident, accident or other matter which may give rise to a formal complaint, claim or legal proceedings in respect of the provision or failure to provide the Service in accordance with the Contract, the Contractor shall notify the Council's Representative immediately and such notification shall include all relevant information to enable him to investigate the matter.

12.6 The Contractor shall ensure that: -

(i) its employees, agents or sub-contractors shall perform their duties under the Contract in as orderly and quiet a manner as may reasonably be practicable

(ii) its employees, agents or sub-contractors shall wear or carry at all times when engaged on the Service such identification as the Council's Representative may specify;

(iii) all vehicles, mobile plant and equipment used by it in the provision of the Services shall bear, in a clear and externally legible manner, such logos and form of words indicating the partnership between the Council and the Contractor, as shall be directed by the Council's Representative;

(iv) any employee, agent or sub-contractor of the Contractor shall disclose his or her identity and status as an employee of the Contractor to any officer of the Council or member of the public if requested;

(v) all employees, agents or sub-contractors of the Contractor at all times while engaged in the provision of the Service to be properly dressed in appropriate uniform or work wear to the satisfaction of the Council's Representative and all uniforms or work wear to be worn by the Contractor's employees, agents or sub-contractors shall be first approved by the Council's Representative and be provided, maintained and replaced as necessary by the Contractor or its agents or sub-contractors;

(vi) all employees, agents or sub-contractors of the Contractor will provide assistance to the Council's Representative in the investigation of complaints, alleged breaches of statute and/or disciplinary matters involving Council's staff, and claims for damages and other similar matters;

(vii) in the event that any employee, agent or sub-contractor of the Contractor shall default in his performance of duties under the Contract or is not medically fit to perform the unsuitable for the duties assigned to him, the Council's Representative shall be entitled, but not unreasonably or vexatiously, to require the Contractor by notice in writing to remove from the provision of the Service any person specified in such notice.

(viii) the Contractor will be required to assist the Council's Representative in identifying any such employee, agent or sub-contractor subject to the notice referred to in (vii) above;

(ix) the Contractor shall forthwith remove the person identified pursuant to (viii) above from provision of the Service and shall immediately make arrangements to ensure continuity of the Service;

(x) the Council shall not be liable to the Contractor or to the employee, agent or sub- contractor in respect of any liability, loss or damage occasioned by such removal and the Contractor shall indemnify the Council against any claim resulting from such removal; and

(viii) it has in place an effective 'whistle-blowing' procedure whereby employees of the Contractor may raise in confidence concerns about possible malpractice without fear of victimisation, subsequent discrimination or disadvantage and shall publish such procedure in its Service Delivery Plan and demonstrate to the satisfaction of the Council's Representative that it has circulated details of the procedure to all of its employees.

12.7 Where an appropriate British/European Standard Specification or British Standard Code of Practice or regulatory guidelines and requirements exist, all goods, services and materials used or supplied, and all workmanship shall be of at least the standards required by the Standard or Code of Practice etc.

12.8 The Contractor must: -

(i) permit the Council's Representative and agents of the Council to have access (at all reasonable times and upon reasonable notice) to all its premises, facilities and records used in connection with the Contract; and

(ii) if required, ensure that its employees and any agents or sub-contractors give such information and other assistance to the Council's Representative and agents of the Council as will enable him/them to ensure that the Contractor is able to fulfil its contractual obligations.

(iii) Ensure its facilities and staff fully comply with all relevant DVLA requirements and regulations, including registrations, at all times, and that no loss of service or suspension of enforcement will occur due to noncompliance on the Contractor's behalf.

12.9 The Contractor shall not, and shall ensure that its employees, agents or sub-contractors do not, in any circumstances hold itself or themselves out as: -

(i) being the servant or agent of the Council for any other purpose other than those expressly conferred by the Contract; nor

(ii) being authorised to enter into any Contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation save where the Council agree; nor

(iii) having the power to make, vary, discharge or waive any bylaw or any regulation of any kind of the Service shall be operated only by properly trained staff in a manner which will not give rise to harm, nuisance or unnecessary annoyance to the public or harm, including risk of harm, to themselves, other employees, sub -contractors or agents of the Contractor.

12.11 The Contractor must inform the Council's Representative in writing fully and as soon as possible of any circumstances that may prejudice its ability to provide the Service either temporarily or permanently. The provision of such information shall not in any way release the Contractor from any of its obligations under the Contract.

13. Legal Obligations of the Contractor

13.1 The Contractor must at all times in providing the Services comply with all legal duties imposed upon it, howsoever arising including whether arising by way of statute, Common Law or EU Directive or Regulation including any provision in an Environmental Permit, statutory discharge consent or any planning permission or conveyance, Lease or Licence.

13.2 The Contractor shall fully and effectively indemnify the Council accordingly against any costs, damages or expenses caused by non-compliance with any such legal provisions detailed at Clause 13.1 above.

13.3 The Contractor shall indemnify the Council against any liability loss claim or proceedings arising out of and/or in connection with any breach by the Contractor of its obligations under Clause 13.1 above.

13.4 If the Contractor receives a notice, order, proposal for a notice, or proposals for an order made under any statute, order, regulation or by-law in connection with the Service then it shall supply the Council's Representative with the original or a legible copy of the same on the day of receipt or on the following working day if the day of receipt is a Saturday, Sunday or Bank Holiday.

13.5 The Contractor must not voluntarily enter into any arrangement that might result in a conflict between any such requirement as is mentioned in Clause 13.1 above and its other obligations under the Contract. In the event of such a conflict the Contractor must use its best endeavors and take such steps as the Council's Representative may require, to resolve that conflict so far as possible in order to comply with its other obligations under the Contract.

13.6 Clause 13.1 of these Conditions takes precedence over the other obligations of the Contractor under the Contract.

13.7 The Contractor shall ensure that its employees, agents and sub-contractors at all times act in a way which is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998 and shall act in respect of any person who receives or requests service under this Contract as if the Contractor were a public authority for the purpose of the Human Rights Act 1998.

14. Contractor Warranties

14.1 The Contractor warrants and represents that:

(i) it has full capacity and authority to enter into and to perform each of its obligations under the Contract;

(ii) the Contract is executed by a duly authorised representative of the Contractor; that the information supplied in the Contractor's original Tender remains true and accurate or has notified the Council in writing where this information has changed; there are no material facts or circumstances in relation to the financial position or operational constitution of the Contractor which have not been fully and fairly disclosed to the Council and which if disclosed might reasonably have been expected to affect the decision of the Council to enter into the Contract; and prior to or in entering into the Contract, it has not committed any unlawful or Prohibited Act.

15. Employees and Operational Records

15.1 The Contractor shall maintain current and accurate records of all employees who are or were or who are to be engaged in connection with or provide the Service required by this Contract. These records shall include employee attendances and reasons for absence and shall differentiate between those engaged as operatives and those exercising supervision. These records shall be open for inspection by the Council's Representative at all reasonable times, and a copy of these records shall be provided to him if so requested.

15.2 The Contractor shall maintain current records of all work carried out in the provision of the Service and shall

make them available for inspection by the Council's Representative at all reasonable times.

15.3 The Contractor shall prepare schedules of routine operations in preparing to perform the Services, which shall be available for reference by the Council's Representative and the Contractor's employees. The Contractor shall provide copies of these schedules to the Council's Representative if so requested and it will be in a form agreed with him.

15.4 The Contractor shall provide relevant statistical information as requested by the Council's Representative, including among other things, any information that the Council may reasonably require to fulfil their obligations to supply information to a statutory body or in fulfilment of any other statutory obligation.

16. Data Protection

16.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 10 by the Council and may not be determined by the Contractor.

16.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation.

16.3 This sub-clause 16.3 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

16.4 Schedule 10 sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of personal data and categories of Data Subject.

16.5 The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation and shall not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.

16.6.1 The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing or at any time. Such assistance may, at the discretion of the Council, include:

(a) a systematic description of the envisaged processing operations and the purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
(c) an assessment of the risks to the rights and freedoms of Data Subjects; and
(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

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

(a) process that Personal Data only in accordance with Schedule 10, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
(b) ensure that it has in place Protective Measures to ensure a level of security appropriate to the risks, including, as appropriate, the measures referred to in Article 32(1) of the GDPR, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature and scope as well as context and purposes of the data to be protected;
(ii) harm that might result from a Data Loss Event;
(iii) state of technological development; and
(iv) cost of implementing any measures;

(c) ensure that:

(i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 10);
(ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

- are aware of and comply with the Contractor's duties under this clause;

- are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
- are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
- have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU or European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

(i) the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
(ii) the Data Subject has enforceable rights and effective legal remedies;
(iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavors to assist the Council in meeting its obligations); and
(iv) the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

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

16.6.3 Subject to sub-clause 16.6, the Contractor shall notify the Council immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);
(b) receives a request to rectify, block or erase any Personal Data;
(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
(f) becomes aware of a Data Loss Event.

16.6.4 The Contractor's obligation to notify under sub-clause 16.5 shall include the provision of further information to the Council in phases, as details become available.

16.6.5 Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 16.6 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

(a) the Council with full details and copies of the complaint, communication or request;
(b) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
(c)the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
(d) assistance as requested by the Council following any Data Loss Event;
(e) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

16.6.6 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause under the obligation in Articles 28(3)(h) and 30(2) GDPR. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

(a) the Council determines that the processing is not occasional;
(b) the Council determines (or the Contractor is aware that) the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and/or
(c) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

16.7 The Contractor shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

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

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

(a) notify the Council in writing of the intended Sub-processor and processing;
(b) obtain the written consent of the Council;
(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this sub-clause 16.9 (c) such that they apply to the Sub-processor; and
(d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

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

16.11 The Council may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement) per Articles 28(6), 28(7) and 28(8) GDPR.

16.12 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

16.13 Without prejudice to the rest of this clause 16.13, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement process that Personal Data only on the written instructions of the Council unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data (Applicable Laws). Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Council.

16.14 The Contractor shall fully indemnify the Council in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses arising out of or in connection with any civil claim made in respect information subject to the Data Protection Legislation , which claims would not have arisen but for some act, omission or negligence in breach of this condition on the part of the Contractor, its employees, agents or any subcontractor or anyone acting on its or their behalf.

16.15 The Parties agree that on the termination of the Contract/Agreement, the Processor and any Sub-Processor shall, at the choice of the Controller, return all personal data and copies thereof to the Council or shall destroy all the personal data and certify to the Council that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

16.16 The Contractor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Processor who may have access to Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Personal Data, as strictly necessary for the purposes of the Contract, and to comply with Data Protection Legislation in the context of that individual's duties to the Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

Obligations after the termination of the Service

16.17 The provisions of this sub-clause 16.17 shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

16.18 The Parties agree that on the termination of the provision of the Service, the Data Processor and any Sub-processor shall, at the choice of the Data Controller, return all the personal data transferred and the copies thereof to the Data Controller or shall destroy all the personal data and certify to the Data Controller that it has done so, unless legislation imposed upon the Data Processor prevents it from returning or destroying all or part of the personal data transferred. In that case, the Data Processor warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

17. Confidentiality

17.1 Each Party, their employees and agents (such persons to include the professional and legal advisors of the Parties) will at all times keep confidential and secret and will not disclose to any person other than a person authorised by the other Party or as may be required by law, any information, materials or documents acquired in connection with the Contract which concern such other Party, its employees, business or procedure.

17.2 The obligations contained in Clause 17.1 shall continue without limit in point of time save that they shall cease to apply to information coming into, and for the time deemed as remaining in, the public domain otherwise than by breach of these obligations.

17.3 The Contractor shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Contractor of this Clause.

18. Intellectual Property

18.1 The Contractor shall not, in connection with the performance of the Services or any other duty or obligation under the Contract, use, manufacture, supply or deliver any process, article, matter or thing which could be an infringement of any Intellectual Property Rights of the Council or any other person.

19. Indemnity and Insurance

19.1 The Contractor shall be liable for and shall indemnify the Council, their Members, Officers, employees and agents against any action, liability, loss, claim, expense or proceedings howsoever arising in respect of: -

(i) any damage to property real or personal including but not limited to any infringement of third party intellectual property; and

(ii) any personal injury (including injury resulting in death); and

(iii) any consequential or indirect loss suffered by the Council, arising out of or in connection with the provision of the Services insofar as such damage or injury shall be due to any act or omission of the Contractor, its employees, sub-contractors and permitted assignees, except and to the extent that such action, liability, loss, claim, expense or proceedings may arise solely out of the act, default or negligence of the Council, their employees or agents.

19.2 Without prejudice to the Contractor's liability under Clause 19.1 above, the Contractor shall effect and maintain during the Contract Term appropriate insurance policies with a reputable insurer(s) in such sums as are deemed prudent in all circumstances by the Contractor (but in any event with the minimum limits of indemnity specified in Clause 19.5 below) and will provide evidence that such cover is maintained as and when required by the Council's Representative.

19.3 All such policies shall be on normal commercial terms and with an insurer of repute previously agreed by the Council (such agreement not to be unreasonably withheld or delayed) and shall be endorsed to preclude any rights of subrogation against the Council or any Member, Officer, employee or agent of the Council.

19.4 Any excesses or deductibles under such insurances shall be the sole and exclusive responsibility of the Contractor.

19.5 The Contractor shall effect and maintain the following Required Insurances throughout the Contract Term: -

(i) Public Liability Insurance with a minimum limit of indemnity of £5,000,000 (five million pounds) for each claim or such higher limit as the Council may reasonably require from time to time;

(ii) Employer's Liability Insurance with a minimum limit of £10,000,000 (ten million pounds) for each claim or such higher limit as the Council may reasonably require from time to time; and

(iii) suitable and sufficient comprehensive motor insurance cover in respect of the operation of the Contractor's vehicles and other mobile plant, to the satisfaction of the Council's Representative.

19.6 In the event that the Contractor is granted occupancy or use of any of the Council's premises, appropriate and adequate property insurance cover will be provided by the Contractor at its own expense at levels to be agreed between the Parties prior to any such occupancy under the Contract.

19.7 Without prejudice to the Contractor's liability detailed at Clause 19.1 above, the Contractor shall insure and keep insured all premises, plant and equipment provided by it for the performance of the Services against all normal risks and damage and shall upon request produce to the Council's Representative the certificates of insurance.

19.8 Any excesses or deductibles under all such insurances shall be the sole and exclusive responsibility of the Contractor.

19.9 The Contractor hereby agrees that any insurance proceeds recoverable pursuant to insurances may be applied, at the option of the Council's Representative, to making good damages or in replacing damaged property.

19.10 If the Contractor wishes to self-insure against such risks, the approval of the Council's Representative must have been agreed in writing prior to execution of the Contract

19.11 The Contractor shall prior to the commencement of the Service and thereafter on the renewal date of each individual policy of insurance, and at such other times as the Council's Representative may reasonably require:

(i) provide sight of original insurance documentation (including policies, cover notes, premium receipts and any other documents) to the Council's Representative;

(ii) supply copies of the original insurance documentation; and

(iii) supply confirmation from the Contractor's and any proposed or approved sub- contractor's insurers that the insurance obtained is fully compliant with the obligations of this Contract.

19.12 The Council's Representative shall be entitled to notify the Contractor in writing that in his opinion any such policy of insurance or self-insurance arrangement does not provide sufficient cover to comply with this entire Clause 19 and to require the Contractor to provide such insurance that will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and maintain such insurance as the Council's Representative shall reasonably require.

19.13 Notwithstanding the provisions of Clause 19.12 above the Council shall not be deemed to have compromised the liability of the Contractor nor shall they be under any liability whether or not they proffer such opinion on the said insurance.

19.14 It shall be a condition of this Contract that the Contractor will deal speedily and efficiently with all claims submitted, either by its own employees or by referring such claims to its insurers.

19.15 In its performance of the Services, the Contractor shall accept full responsibility for and shall indemnify and hold harmless the Council and their staff and Elected Members from and against the following claims: -

(i) all claims in respect of the Contractor's and its sub-contractor's non-compliance with applicable laws and regulations, including but not limited to Health and Safety at Work Act 1974, the Income Tax and Corporation Tax Acts, the Finance Acts as they effect and relate to this Contract and all other subordinate legislation amendments or additions thereto or re-enactments thereof.

(ii) all claims whatsoever and howsoever arising which may at any time be made, which arise out of accidents to the Contractor's staff or the staff of the Contractor's sub- contractors, and loss or damage to the Contractor's property and the property of its sub-contractors and their staff;

(iii) all third party claims arising from the performance of the Services and all liabilities of whatsoever nature caused by the negligence of the Contractor and/or its sub- contractors;

(iv) all loss or damage caused to any land, building or chattel in the ownership, occupation or possession of or partial occupation or possession of the Council by an employee or agent of the Contractor or its sub-contractors (whether such damage is caused by negligence or in any other way whatsoever); and

(v) any consequential or indirect loss suffered by the Council as a result of the acts or omissions of the Contractor and/or its agents, sub-contractors or their staff.

20. Uninsurable Risks

20.1 Nothing in Clause 19 above shall oblige the Contractor to take out insurance cover in respect of a risk which is uninsurable.

20.2 If it determined by the Contractor that a risk usually covered by the required insurances has subsequently become uninsurable; and

(i) the Contractor has notified the Council's Representative within five working days of determining the uninsurable risk;

(ii) where the Parties agree, or it is determined pursuant to Clause 41 herein (Settlement of Disputes) that the risk is uninsurable; and

(iii) that the risk being uninsurable is not caused by the actions or omissions of the Contractor, Its agents or sub-contractors, then the Parties shall meet to discuss the means by which the applicable uninsured risk should be managed and any failure to agree shall be resolved pursuant to Clause 41 herein.

21. Payments

21.1 In consideration of the Contractor carrying out its obligations under this Contract the Council shall pay to the Contractor the Contract Price as set out in the Schedule of Rates in accordance with the provisions of this Clause.

21.2 After the end of each month the Contractor must submit to the Council's Representative a VAT invoice in respect of the Services performed during that month. Invoices shall be submitted within 14 days of the end of the month to which the invoice refers. A composite invoice detailing all aspects of the Services supplied under the Contract may be submitted. The invoice will contain sufficient detail to enable it to be reconciled with any supporting documentation relating to the invoice. The supporting documentation that is required must show: -

(i) the valuation of the work under taken and resources used in respect of each aspect of the Contract for that month;

(ii) the amounts to which the Contractor considers itself entitled including any variations or instructions for additional Service agreed in writing with the Council's Representative; and

(iii) supporting information including any other information necessary to support the claim for payment that may reasonably be required by the Council's Representative.

21.3 Any payment due to the Council in respect of any part of the Services should accompany the invoice and cheques should be made payable to Bournemouth, Christchurch and Poole Council.

21.4 The invoice will be reconciled and paid to the Contractor the amount properly due under the Contract within 28 days of the later of the following dates: -

(i) the date of receipt by the Council's Representative of the Contractor's invoice; or

(ii) the date of receipt by the Council's Representative of any supporting documentation required.

21.5 Within 14 days of receipt of the invoice and necessary supporting documents the Council's Representative shall notify the Contractor in writing of any disagreement with any of the content of the invoice or supporting documentation. The Council's Representative and the Contractor's Representative shall then seek to reach agreement on the sum which is properly payable, and a revised invoice shall be issued by the Contractor and any balance payable thereunder shall be paid within 28 days thereof.

21.6 If agreement cannot be reached within a reasonable time the Council's Representative shall notify the Service Director, Legal and Democratic Services, of the BCP Council who shall make a decision with regard to how the Council shall settle or progress the issue. In the event of the Contractor remaining in dispute then Clause 41 (Settlement of Disputes) of these Conditions will apply.

22. Assessments of Amounts Due

22.1 The amount stated as being due in the Contractor's invoice shall be the value of the work forming part of the Services which have been provided by the Contractor, completed to the satisfaction of the Council's Representative, measured and valued in accordance with the Schedule of Rates and as adjusted by the following:

(i) less any previous payments made to the Contractor for that part of the Service; and/or

(ii) any other additions or deductions as otherwise authorised in the Contract.

23. Interest on Overdue Payments

23.1 In the event of failure by the Council's Representative to certify, or the Council to make, payment in accordance with Clause 22 above, the Council shall pay to the Contractor interest on any payment overdue thereunder at a rate per annum equivalent to 2% above Bournemouth, Christchurch and Poole Council's banker's Base Rate current on the date upon which such payment first becomes overdue. In the event of variation in the above Base Rate being announced whilst such payment remains overdue the interest payable to the Contractor for the period that such payment remains overdue shall be correspondingly varied from the date of each such Rate variation.

24. Taxes

24.1 Sums payable to the Contractor pursuant to this Contract are exclusive of Value Added Tax (VAT). The Council shall pay to the Contractor in the manner hereinafter set out, any VAT properly chargeable on the delivery of the Services under the Contract by the Contractor at the appropriate rate. The Contractor shall state on each monthly valuation which elements of the work undertaken are exempt from VAT, bear a zero rate of VAT, or bear a rate of VAT greater than zero, in each case specifying the exact rate chargeable.

24.2 Upon receipt by the Contractor of any payment made by the Council under the Contract, being a payment including VAT, the Contractor shall forthwith issue to the Council's Representative an authenticated receipt in such form as may be required by the Value Added Tax Act 1994 (the Act for the purposes of this clause) or any amendment or re-enactment thereof or by a Regulation made thereunder and references to Sections within the Act shall include any similar provisions made by such amendment, re-enactment or Regulation.

24.3 If the Council's Representative objects to any statement on the rate of VAT on any invoice, and such objection cannot be resolved by the Parties by agreement, the Council may require the Contractor to refer to the Commissioners of HM Revenue and Customs (the Commissioners) any dispute, difference or question.

24.4 If the Contractor refers the matter to the Commissioners (for whatsoever reason) and the Council are dissatisfied with their final decision on the matter, the Contractor shall, at the request of the Council's Representative, refer the matter to a Value Added Tax Tribunal by way of appeal under Section 83 of the Act, whether the Contractor is so dissatisfied or not. Should the Contractor be required to deposit a sum of money equal to all or part of the tax claimed under Section 84(3) of the Act, the Council shall pay an equivalent sum to the Contractor who shall hold it on trust until such dispute is settled. The Council shall further reimburse the Contractor any costs or expenses reasonably and properly incurred in making the reference (less any costs awarded to the Contractor by the Tribunal) provided that such reference was made at the request of the Council.

24.5 Upon the final adjudication by the Commissioners or, in the event of a reference to a Tribunal, by the Tribunal, the Council shall pay the amount of the VAT adjudged due to the Contractor. Should the amounts already paid by the Council, either by way of payment of VAT, or by way of reimbursement of any money required to be deposited by the Contractor with the Commissioners as above, exceed the VAT adjudged to be due, the Contractor shall forthwith repay such excess to the Council.

24.6 Notwithstanding any provision to the contrary under the Contract, the Council shall not be obliged to make any further payment to the Contractor if the Contractor is in default in providing the receipt referred to above, provided that this provision shall only apply where the Council can show that they require such receipt to validate any claim for credit for VAT paid or payable which the Council are entitled to make to the Commissioners.

24.7 The Council will pay to the Contractor such Value Added Tax and any other taxes as may be properly chargeable by the Contractor in connection with the provision of the Services and is shown on a submitted tax invoice in respect thereof.

25. Contract Price Review

25.1 The rates and prices contained in the Schedule of Rates shall be reviewed on each anniversary of the Commencement Date ("the Review Date"). The amounts payable by the Council to the Contractor pursuant to Clause 22 above shall be increased or decreased in accordance with the provisions of this Clause if there shall be any changes in the value of the Consumer Price Index (CPI) compiled by the Government and published by ONS, HMSO or any such other Government office as may from time to time supersede the same.

25.2 For the purpose of this Clause: -

(i) 'Final Index Figure' shall mean any Index Figure appropriate to Clause 25.1 above not qualified in the relevant publication as provisional;

(ii) 'Base Index Figure' shall mean the appropriate Final Index Figure applicable on the date of the commencement of the Contract;

(iii) 'Current Index Figure' shall mean the appropriate Final Index Figure applicable at each Review Date; and

(iv) the 'Effective Value' in respect of the whole of the Services shall be the amount which, in the opinion of the Council's Representative is due to the Contractor.

25.3 The increase or decrease in the amounts otherwise payable pursuant to Clause 22 above shall be calculated by multiplying the Effective Value by a Price Fluctuation Factor, the numerator of which is the relevant Current Index Figure minus the relevant Base Index Figure and the denominator of which is the relevant Base Index Figure.

25.4 If the basis of computation of the Index referred to in Clause 25.1 shall change, any official reconciliation between the two bases of computation published by HMSO, the Central Statistical Office or any Government Department upon which duties in connection with the compilation and maintenance of the Indices have devolved shall be binding upon the Council and the Contractor and shall be applied in adjusting the application of the relevant Index hereto.

25.5 In the absence of such official reconciliation, such adjustments shall be made to the figures of the relevant Index as to make it correspond as nearly as possible to the previous method of computation. Such adjusted figures shall be used to the exclusion of the actual published figures (until officially reconciled figures are published) and in the event of a dispute regarding such adjustments the decision of the Council shall be final.

26. Audit

26.1 The Contractor shall install and implement such apparatus and systems as the Council's Representative may from time to time require ensuring that the Council are charged for and paying only such amounts as they are obliged to under the terms of the Contract.

26.2 In accordance with the provisions of the Contract, all records and data deriving from such systems upon which the Contractor relies for payment of the Contract Price shall be made readily available to the Council's Representative or any other competent person appointed by him and the Contractor, its agents and sub-contractors shall render all necessary assistance to the Council's Representative and other persons appointed by him as and when requested.

27. Recovery of Sums Due to the Council

27.1 Any sum of money recoverable from or payable by the Contractor to the Council under the Contract may be deducted from any sum then or subsequently due to the Contractor from the Council under the Contract or any contract with the Council.

28. Quality Assurance

28.1 The Contractor shall, at the commencement of the Contract, have in place a Quality Management System approved by the Council's Representative or demonstrate to his satisfaction that such an approved system will be in place and fully operational within six months of the Commencement Date.

28.2 The Contractor shall ensure that all aspects of the Service are carried out in accordance with the Quality Management System adopted by it for the performance of the Service and detailed in the Service Delivery Plan.

29. Performance Standards

29.1 The Representatives of the Parties shall meet at least once in every three months to review the Service provided, the performance standards, the terms of this Contract and any other matters with a view to deciding whether any improvements can be made and implemented during the Contract Period. Where any variation(s) are required as a result thereof, the Council's Representative may issue a Variation Notice in accordance with the provisions of Clause 34 of the Contract.

30. Default Monitoring

30.1 The Services shall be the subject of such monitoring systems as the Council's Representative sees fit to perform in addition to those set out in this Clause and elsewhere in the Contract.

30.2 The Council's Representative may investigate or cause to be investigated each case where the Contractor has or may have failed, for whatever reason, to perform the Service in whole or in part in accordance with the provisions of the Contract (a Default).

30.3 Where the Council's Representative is satisfied that in any particular case the Contractor is in default of the Contract provisions he shall be entitled to instruct the Contractor to remedy the default within such reasonable time as he may determine by issuing a Remediation Notice.

30.4 If the Contractor fails to remedy the default within the rectification period stated in the Remediation Notice it will be held to be in default of the Contract and the Council's Representative shall be entitled to issue a Default Notice to the Contractor specifying:

(i) the nature of the Default and;

(ii) instructions to the Contractor to remedy the Default within such reasonable period as the Council's Representative may determine.

30.5 The reasonable administrative costs, together with the costs of re-inspection incurred by the Council in respect of each Default Notice issued shall be deducted from the Contractor's monthly statement.

30.6 If the Contractor fails to rectify any failure in performance which is the subject of a Default Notice, a further Default Notice shall be issued every 24 hours from the service of the previous Default Notice until the Council's Representative is satisfied that the failure concerned has been rectified.

30.7 In respect of each Default Notice, the Council's Representative shall be entitled to engage another contractor to carry out the work which is the subject of the Default Notice and to recover from the Contractor all costs and expenses associated therewith, including any administrative costs.

30.8 The Council's Representative shall endeavour to issue all Remediation and Default Notices in writing. However, in the event that this is not practicable he may do so verbally (whether in person or by telephone), by facsimile or electronic mail transmission, and shall confirm the issue of such Remediation or Default Notice(s) as soon as reasonably practicable thereafter. The response time for the Remediation or Default Notices shall begin at the time of the transmission of the relevant notice either verbally, electronically or in writing by the Council's Representative. The service of a Remediation or Default Notice shall have been deemed to have taken place when carried out in accordance with the provisions of this Clause 30.8.

30.9 In the event that the Contractor accrues 5 or more Remediation Notices or 2 or more Default Notices in any consecutive four-week period and without prejudice to any other remedies provided in the Contract, the Council's Representative shall be entitled to serve a Warning Notice on the Contractor.

30.10 In the event of the service of 3 or more Warning Notices on the Contractor during any consecutive period of six months, the Council's Representative shall be entitled to serve a Termination Notice on the Contractor.

31. Irredeemable Default

31.1 The Council's Representative may issue a Default Notice to the Contractor where a Default may have or appears to him to have occurred that is not capable of being remedied (an Irredeemable Default).

31.2 Where the Council's Representative is satisfied that in any particular case the Contractor is in Irredeemable Default he shall be entitled to issue an Irredeemable Default Notice to the Contractor specifying:

(i) the nature of the Irredeemable Default; and

(iii) request written acknowledgement from the Contractor within 24 hours of the date of the Irredeemable Default Notice that an Irredeemable Default exists although service will be deemed in accordance with clause 8.

31.3 On the expiry of the 24-hour notice period within the Irredeemable Default Notice the Council's Representative shall be entitled to invoke the termination provisions under Clause 36.

31.4 The administrative costs incurred by the Council in respect of each Irredeemable Default Notice issued shall be £50 and such sum(s) shall be deducted from the Contractor's monthly statements in accordance with Clause 22 of the Contract.

31.5 The Parties agree the amount of the deduction stated in this Clause shall constitute liquidated damages for administration and is not a penalty.

31.6 The Council's Representative shall endeavour to issue all Irredeemable Default Notices in writing but in the event that it is not practicable he may do so verbally (whether in person or by telephone) or by electronic mail transmission and shall confirm the issue of such Irredeemable Default Notice in writing as soon as reasonably practicable. The response times for the Irredeemable Default Notices shall begin at the time of the transmission of the relevant notice either verbally, electronically or in writing by the Council's Representative.

32. Direct Monitoring

32.1 Where it is unable to perform the Services or any part of them at any time, the Contractor shall immediately inform the Council's Representative and confirm the same in writing within one working day of the event or circumstance, giving details of the reasons and likely duration of the delay, curtailment or unavailability of the Service. The provision of information under this and any related Clause shall not in any way release or excuse the Contractor from any of its obligations under the Contract.

32.2 The Contractor's Representative shall be available to attend any inspection or meeting at agreed times if so requested by the Council's Representative and shall be required to provide sufficient management information in such detail as to satisfy the Council's Representative of its working arrangements.

32.3 The Contractor shall maintain up to date records of its own monitoring system such as to satisfy the Council's Representative that a true, accurate and objective assessment of performance and quality standards is being made and that problems or potential problems are identified and corrected at as early a stage as possible so as not to compromise the delivery of the Service.

32.4 Without prejudice to other rights and remedies available to the Council, the Contractor shall take any action necessary to correct or pre-empt any problems or potential problems identified by the Council's Representative.

33. Continuity of Performance

33.1 The Contractor must if required at any time demonstrate to the satisfaction of the Council's Representative that it has the resources and capability at the date of the said requirement to supply the Services throughout the remainder of the Contract Term to the standards given in the Specification.

33.2 The Contractor must inform the Council's Representative in writing fully and as soon as possible of any circumstances that might prejudice its ability to provide the Services whether temporarily or permanently. The provision of such information shall not in any way release the Contractor from any of its obligations under the Contract.

33.3 The Contractor must immediately notify the Council's Representative of any actual or potential industrial action, whether such action is by its own staff or others or any other contingency of any kind that affects or might affect

its ability at any time to fulfil its obligations under the Contract. In the event of industrial dispute or other such contingency the Contractor shall implement such plans and arrangements with such amendments and modifications as the Council's Representative shall reasonably require with a view to providing the best possible substituted Service.

33.4 In the event of industrial action by any third party who is not a Party to the Contract, the Contractor shall continue to be liable for the complete and proper delivery of the Services to the satisfaction of the Council's Representative.

33.5 The Contractor will not be liable for any unavoidable default in the provision of the Service if that default is due to an Act of God, an Act of Government or the Monarch's enemies, armed conflict or civil commotion, provided that the relevant factor was beyond its control and not reasonably foreseeable at the time this contract was formed.

33.6 In the event of unavoidable default by the Contractor for any reason stated in Clause 33.5 of these Conditions, the Contractor shall provide the best possible substituted Services as agreed in consultation with the Council's Representative. The cost of such substituted Services shall be based upon the prices specified in the Contractor's Tender as and where appropriate, but otherwise upon a reasonable price.

33.7 In the event that there is no agreement regarding the best possible substituted Services, or if the substituted Services provided by the Contractor pursuant to Clause 33.6 are of an unacceptable quality standard, the Council's Representative may appoint a third party to provide the Services or any part thereof. Any and all costs to the Council in excess of the cost that they would have paid the Contractor, but for the Contractor's failure to provide the Services, in obtaining the Services or any part thereof from such third party shall be paid by the Contractor, together with a reasonable administrative charge being liquidated damages and not a penalty of any sort.

34. Variations to the Service

34.1 Subject to Clause 34.2 below the Council's Representative may at any time propose a Variation to the Services in accordance with the procedures set out in Schedule 2 but no variation under this condition may have the effect of changing the fundamental nature of the Services unless the Contractor agrees in writing which change shall be a Variation.

34.2 The Council's Representative shall not propose a Variation which:

(i) infringes any Law;

(ii) would require the Contractor to apply for an unobtainable amendment to a Necessary Consent or an unobtainable new Necessary Consent; or

(iii) would materially and adversely affect the Contractor's ability to deliver the Service.

34.3 Where the Contractor wishes to propose a Variation to the Service, it must comply with the procedures set out in Schedule 2.

34.4 Unless the Council's Representative specifically agrees in writing to an increase in the Contract Price, there shall be no increase in the Contract Price as a result of a Variation proposed by the Contractor.

34.5 The Council's Representative shall not reject a Variation proposed by the Contractor which is required in order to confirm a Change in Law.

34.6 If a Variation proposed by the Contractor causes or will cause the Contractor's costs or those of a Sub-Contractor to decrease the Council and the Contractor shall share in the savings and there shall be an adjustment to the Contract Price to take account of the Council's share of the savings.

34.7 The value of the Estimate submitted by the Contractor under the provisions of Schedule 2 shall be calculated in accordance with either:

(i) the Schedule of Rates where the Variation is of a similar character to the Service currently being performed; or

(ii) at fair rates and prices where the Variation is not of a similar character to the Service currently being performed, so that the Contractor is in no worse or better position.

34.8 Payment of the value of any Variation shall be made through a pro-rata adjustment to the Contract Price over the remainder of the Contract Term.

34.9 The Parties shall as soon as reasonably practicable after the agreement of any Variation execute such documents as may be necessary to amend the provisions of the Contract accordingly.

35. Contractor's Assets

35.1 The Contractor shall be responsible at its own cost for providing all of the Contractor's Assets.

35.2 All of the Contractor's Assets used for the purpose of performing the Services must be either owned by the Contractor or hired by it pursuant to a contract of simple hire (and not hire purchase) which contract must contain a clause permitting the Contractor to assign the benefit of such contract to the Council.

35.3 Throughout the Contract Term the Contractor shall:

(i) operate, keep in repair and maintenance, the Contractor's Assets in accordance with Good Industry Practice and any manufacturer's recommendations

(ii) insure the Contractor's Assets in accordance with Clause 19 (Indemnity and Insurance); and

(iii) provide replacements when breakdowns occur or where a Contractor's Asset ceases to work effectively.

36. Termination

36.1 The Council may terminate the Contract and recover from the Contractor any resulting loss if the Contractor or any person employed by it or acting on its behalf whether or not with its knowledge has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for taking or for not taking any action in relation to the Contract or any other contract with the Council, or in relation to any contract with the Council, has committed any offence under the Bribery Act 2010 c.23, or has given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

36.2 If, during the Contract Term the Contractor commits a Default which will arise where the Contractor:

(i) commits any breach of its obligations under the Contract which materially or adversely affects the performance of the Services; or

(ii) commits an Irredeemable Default; or

(ii) makes an assignment of the Contract in breach of Clause 9 above; or

(iii) breaches any of its obligations under Clause 19 (Indemnity and Insurance); or

(iv) fails to perform the Services for a continuous period of 7 days or for a total period of 30 days in any 12 month period during the Contract Term; or

(v) the Contractor is convicted of a criminal offence;

(vi) and there is a reasonable belief on the part of the Council's Representative that damage to the reputation or standing of the Council will occur if the Contract continues, then the Council's Representative may serve a Termination Notice on the Contractor.

36.3 Upon termination of the Contract due to a termination event described above and without prejudice to any other provisions of the Contract, the Contractor shall: -

(i) be deemed to be in breach of the Contract;

(ii) at the sole discretion of the Council's Representative immediately cease to execute the Services;

(iii) fully and promptly indemnify and compensate the Council in respect of the cost of causing to be performed such Services as would have been performed by the Contractor during the remainder of the Contract Term. This indemnity and compensation shall apply toto the extent that such costs exceed such sums as would have been lawfully payable to the Contractor as the anticipated cost of performing such Services (such costs to include all costs of terminating the Contract and entering into new Contracts with replacement Contractors). The Council shall be at liberty to have such Services performed by any persons (whether or not employees of the Council) as the Council's Representative shall think fit;

(iv) co-operate and ensure the co-operation of all its staff in achieving an orderly and efficient hand-over to the Council or such person as the Council's Representative may nominate to manage the services directly;

(v) Deliver to the Council's Representative all materials, documents, plans, drawings, records (including technical records), computer programmes and related data, operating and maintenance manuals and instructions held by or on behalf of the Contractor or any staff relating to the service.

36.4 If the Contract in whole or in part is terminated as provided in the Clause and is not reinstated, the Council will without prejudice to any other rights which they may have at the date of termination: -

(i) cease to be under any obligation to make further payments, in the case of termination in parts, until the costs, loss and/or damage resulting from or arising out of the termination have been calculated and provided such calculation shows a sum due to the Contractor;

(ii) be entitled to exercise a lien over any of the materials, plant, equipment, vehicles or other goods belonging

to the Contractor for any sum due hereunder or otherwise from the Contractor to the Council;

(iii) be entitled to engage and pay other persons to complete the provision of the Services or any parts thereof;

(iv) be entitled to deduct from any sums which would have been due from the Council to the Contractor under the Contract or any other contract or to recover from the Contractor as a debt, any loss, cost or damage to the Council resulting from or arising out of the termination. Such loss, cost or damage will include the cost to the Council of the time spent by their officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof and the additional cost to the Council of those alternative arrangements together with a reasonable administrative charge; and

(v) notwithstanding administrative charges, when the total costs, losses and/or damages resulting from or arising out of the termination have been calculated and deducted from any sums which would, but for sub-clause (i) of this Clause, have been due to the Contractor, any balance shown as due to the Council will be recoverable as a debt, or alternatively the Council will pay to the Contractor any balance shown as due to the Contractor.

36.5 The rights of the Council under this Condition 36 are in addition to and without prejudice to any other rights the Council may have whether against the Contractor directly or pursuant to any guarantee, indemnity or bond, and whether arising under the Contract or otherwise.

37. Termination on Force Majeure

37.1 If a Force Majeure Event prevents any of the Parties from performing their obligations under the Contract in any material respect for a period of three (3) consecutive months then provided the notification requirements set out in Clause 54 herein (Force Majeure) have been complied with, without prejudice to any accrued rights or remedies under the Contract, either the Council or the Contractor may terminate the Contract by giving thirty (30) days notice in writing to the other Party.

38. Termination on Corrupt Gifts or Fraud

38.1 If a Prohibited Act is committed by the Contractor or by any of its representatives not acting independently of the Contractor, then the Council may, without prejudice to any accrued rights or remedies under the Contract, terminate the Contract forthwith by written notice with immediate effect or subject to written notice to the Contractor terminate on any day which day shall be stated in the termination notice and which shall be a date falling up to 90 days after the date of the receipt of the termination notice.

38.2 If the Prohibited Act is committed by any representative of the Contractor acting independently, then the Council may, without prejudice to any accrued rights or remedies under the Contract, terminate the Contract by written notice and the Contract will terminate on notice unless the Contractor procures the termination of such person's employment, or (in the event that such person is not employed directly by the Contractor) if such

person is not acting independently of their employer, the appointment of their employer and (if necessary) procures the performance of such part of the Service by other persons.

38.3 Any notice of termination under this Clause shall specify:

(i) the nature of the Prohibited Act;

(ii) the identity of the party whom the Council believe has committed the Prohibited Act;

(iii) the date on which the Contract will terminate, in accordance with the applicable provision of this Clause.

39. Expiry

39.1 This Contract shall terminate automatically on expiry of the Contract Term unless it shall have been

extended or terminated earlier in accordance with the provisions of the Contract.

39.2 The Contractor shall not be entitled to any compensation on the expiry of the Contract Term.

40. Effect of Termination or Expiry

40.1 Notwithstanding that a Party may have a right to terminate the Contract that Party may elect to continue to treat the Contract as being in full force and effect and to enforce its rights under the Contract.

41. Settlement of Disputes

41.1 Any dispute relating to the subject matter of this Contract and the rights, duties or liabilities of the Parties under this Contract shall first be discussed informally between the Council's Representative and the Contractor's Representative.

41 .2 Any dispute, difference or question between the Parties to the Contract with respect to any matter or thing arising out of or relating to the Contract which cannot be resolved by such negotiation will be referred to arbitration under the provisions of the Arbitration Act 1996, or any amendment, re-enactment or modification thereof, by a single arbitrator (being a member of the Chartered Institute of Arbitrators) to be appointed by agreement between the Parties or in default of agreement by the Chairman for the time being of the Chartered Institute of Arbitrators.

41.3 The provisions of this Clause shall be without prejudice to the right of a Party to seek the resolution of any matter relating to the Contract through the Courts and the referral of any matter to arbitration under Clause 41.2 shall not prejudice, prevent or delay the recourse of any Party to the Courts for the resolution of any matter arising under the Contract or the endorsement of the Contract against any party or parties thereto.

42. Complaints in Respect of Service Provision

42.1 If any person or organisation makes a complaint concerning the Services relating to this Contract for which the Contractor is responsible, the Contractor shall immediately report the complaint to the Council's Representative, investigate the complaint and take such corrective action as is appropriate and report such action to the Council's Representative. Where the complaint is not the responsibility of the Contractor, the Contractor shall inform the Council's Representative immediately or as soon as reasonably practicable manner and shall immediately record all such complaints. If for reasons beyond its control this is not possible, the Contractor shall keep a written record in a Site Incident Log of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Council's Representative at all reasonable times.

42.3 Complaints received by, or referred to, the Council will be investigated by the Council's Representative who, in appropriate cases, may invoke the default procedures.

43. Assistance in Legal Proceedings

43.1 If requested to do so by the Council's Representative, the Contractor shall give all reasonable assistance and co-operation and provide to the Council any relevant information which in connection with any legal inquiry, arbitration or court proceeding in which the Council may be involved, or any relevant disciplinary hearing internal to the Council, or any inquiry by the Local Government Ombudsman, arising out of the provision of the Services.

43.2 Where the Contractor becomes aware of any incident, accident or other matter which may give rise to a complaint to the Local Government Ombudsman or a claim or legal proceedings in respect of the provision or failure to provide the Services, it shall notify the Council's Representative in writing as soon as practicable and in any event within 48 hours thereof. Such notification in writing shall include all relevant information to enable the Council's Representative to investigate the matter fully.

43.3 Such information provided, or assistance rendered pursuant to this Clause and other relevant Clauses in the Contract, in whatever form, shall be at no cost to the Council unless otherwise ordered or determined in any decision or other outcome of any such inquiry, arbitration, court proceedings or enquiry by the Local Government

Ombudsman.

44. Health and Safety

44.1 The Contractor shall, at all times, comply with the requirements of: -

(i) the Health and Safety at Work etc. Act 1974;

(ii) the Management of Health and Safety at Work Regulations 1992; and

(vi) other Acts, Regulations or Orders pertaining to the health and safety of its own staff, the Council's employees, the public and others who may be affected by its performance of the Service.

44.2 The Contractor shall:

(i) conduct the performance of the Service so as to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Council's employees and the Contractor's staff; and

(ii) accept full responsibility for all aspects of health and safety while performing the Services.

44.3 Prior to the commencement of the Contract the Contractor shall nominate a person to be responsible for Health and Safety matters. Whilst on premises owned or occupied by the Council, the Contractor shall ensure that its employees, agents and sub-contractors comply with the Council's general statements of safety policy and with the lawful requirements of the Council's Representative.

44.4 Without prejudice to the Council's rights under the Contract the Council's Representative shall
Be empowered to suspend the provision of the services or part thereof in the event of non- compliance by the Contractor with this Clause 44 or with any other of its legal duties in Health and Safety matters. The Contractor shall not resume provision of the Services or any part thereof until the Council's Representative is satisfied that the non-compliance has been rectified.

44.5 The Contractor shall ensure and demonstrate to the satisfaction of the Council's Representative that all its employees engaged in carrying out the Services have been properly and regularly trained and are fully conversant with safety procedures for working in the vicinity of moving traffic and other relevant hazards that are from time to time identified, including the use of plant, equipment and chemicals employed in the provision of the Services.

45. Equal Opportunities and Human Rights

45.1 The Contractor will not treat staff employed by it less favourably on the grounds of their colour, age, race, ethnic or national origin, nationality (including citizenship), marital status, sex, sexual orientation, religion or belief or disability.

45.2 In the performance of the Service and in its dealings with service users, Council’s representatives and members of the general public, the Contractor shall comply and ensure that its staff complies with:

(i) the Human Rights Act 1998 as if the Contractor were a public body (as defined in the Human Rights Act 1998);

(ii) all Laws relating to equal opportunities, including but without limitation relating to disability, sex, age, religion, sexuality and race discrimination in the delivery of services; and

(iii) the Council's equal opportunities policies and procedures as may be adopted and amended from time to time and published on the Council's Equalities & Diversity Policy web site pages.

45.3 The Contractor shall at all times during the Contract Term allow the Council's Representative or any competent person appointed by him access to any employee or agent of the Contractor for the purpose of interview

in connection with the carrying out of all parts of the Services and shall give the Council's Representative all necessary assistance to enable him to investigate claims of alleged discrimination howsoever arising and from whatsoever source.

46. Transfer of Undertakings (Protection of Employment) Regulations 2006

46.1 In the event that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "Regulations" for the purposes of this clause) apply to this Contract, the Contractor shall comply in all respects with the Acquired Rights Directive 77/187 and the Regulations so far as they apply to this Contract.

46.2 Not less than six months before the expiration of the Contract Term (or by such other date as the Council's Representative may at his sole discretion decide (if for example the Contract is determined otherwise than by the effluxion of time) and within 14 days of notification, the Contractor shall disclose to the Council's Representative with regard to the employees then engaged in the provision of the Services or carrying out the work, sufficient information as will enable the Council and any prospective Tenderer to make proper provision within their Tenders for compliance with the 'Acquired Rights Directive' 2001/23/EC and the Regulations or any Directive or regulations made in substitution for or modifying, re-enacting or varying the same and without prejudice to the generality of the foregoing the Contractor shall disclose to the Council's Representative with regard to the said employees all the items of information that the Council's Representative may, at his discretion specify

46.3 At all times during the Contract term the Contractor shall notify the Council's Representative of any significant changes to the information above which it expects or can reasonably foresee as occurring within twelve months of the change occurring. In particular the value of any proposed pay award agreed to take effect, both in terms of percentage increase and total value shall be notified to the Council's Representative.

46.4 All pay awards and all other employee benefits granted by the Contractor within the last twelve months of the Contract Term must be capable of justification on proper employment grounds.

47. Freedom of Information and Other Legislation [including Data Protection]

47.1 The Contractor shall note the Council’s current and future obligations under the Data Protection Act 1998, Freedom of Information Act 2000, Environmental Information Regulations 2004, the Accounts and Audit Regulations 2003, Human Rights Act 1998, Equality Act 2010 (all as amended from time to time) and any codes of practice and best practice guidance issued by the Government and the appropriate enforcement agencies.

47.2 The Contractor shall comply with the above legislation in so far as it places obligations upon the Contractor in the performance of its obligations under this Contract.

47.3 The Contractor shall facilitate the Council's compliance with their obligations under these provisions and comply with any reasonable request from the Council's Representative for that purpose.

47.4 To the extent that the Contractor acts as a data processor on behalf of the Council in respect of any personal data pursuant to this Contract, the Contractor shall only process such personal data as is necessary to enable it to provide the Services specified in this Contract.

47.5 The Contractor shall, when acting as a data processor on behalf of the Council, indemnify the Council against all claims and proceedings, and all costs and expenses, incurred in connection therewith, made or brought against the Council by any person in respect of the Acts or Regulations mentioned in this clause, which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor, its employees, sub- contractors and permitted assignees.

47.6 Upon the termination of this Contract, for whatever reason, the Contractor shall, unless notified otherwise by the Council's Representative, or required by Law, immediately cease any processing of personal data on the Council's behalf and destroy all such data in its possession or provide the Council's Representative with a copy of the same on suitable media within three (3) months of the termination of the Contract together with a warranty and indemnity in respect of such destruction and the consequences of noncompliance with this clause.

47.7 The Contractor shall take such steps as may be reasonable and practicable to afford the Council's Representative access to information which is reasonably required by the Council in connection with any of their statutory duties and responsibilities and for any purposes connected with their rights and obligations under the Contract or to enable the Council to prepare the necessary documentation to appoint another person to provide the Service.

47.8 The Contractor shall in all respects co-operate with the reasonable requests of the Council's Representative so as to assist in enabling the Council to comply with all legislation relating to access to information, the Environmental Information Regulations 2004, the Freedom of information Act 2000 and any legislation or guidance issued under or in relation to this Act and the Contractor shall not disclose to any person any information relating to the Service which is exempt from disclosure without the prior written agreement of the Council's Representative.

47.9 The Contractor shall note particularly that the Council may be required to provide information relating to this Contract or the Contractor to a person in order to comply with its obligations under these provisions.

48. Interpretation

48.1 References to Staff and employees of the Contractor will be deemed to include the following unless the context requires otherwise: -

(i) employees of the Contractor and any casual or temporary staff engaged by it for the delivery of the Service; and

(ii) employees of the Contractor's agents and sub-contractors including any casual or temporary staff engaged by them for the delivery of the Service

48.2 Reference to time will be construed, during the period of summertime, to be British Summer Time and otherwise to be Greenwich Mean Time.

48.3 All headings in the Contract are for ease of reference only. They are not part of the Contract or intended to be used as a guide to its interpretation.

48.4 The Contract will be governed by and construed in accordance with English Law, and the English Courts will have jurisdiction over any dispute or difference which arises between the Council or the Council's Representative and the Contractor or the Contractor's Representative out of or in connection with the Contract. The Contract is binding on the Council and their successors and assignees and on the Contractor and its successors and permitted assignees.

48.5 Any reference to the singular includes the plural, and any reference to the plural includes the singular.

48.6 Any word which refers to or implies any gender will include any other gender.

48.7 A reference to any relevant legislation of any International Body, Act of Parliament, or to any Order, Regulation, Statutory Instruments, Code of Practice, Bylaw, Directive or the like whether detailed expressly or incorporated by general reference shall be deemed to include a reference to any amendment or re-enactment or replacement of the same so long as the provisions of that amendment etc. remain relevant to this Contract.

48.8 Communications which under the Contract are required to be "in writing" may be hand-written, type written or printed and sent by hand, post or electronic mail.

49. Contract (Right of Third Parties) Act 1999

49.1 It is hereby agreed and declared that no person who is not a party to this Contract shall be entitled to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

50. Rights and Duties Reserved

50.1 All rights and duties which the Council has as a Local Authority or which the Council's Officers have as

Local Authority Officers are expressly reserved.

50.2 The Contract is without prejudice to the powers and responsibilities of the Council in any capacity whatsoever.

51. Lien and Encumbrance

51.1 The Contractor will not create or allow any other person to create any lien or encumbrance on any property of the Council.

52. Good Faith

52.1 All parties will act in good faith towards each other in relation to all matters arising under this Contract and in particular:

(i) the Contractor will inform the Council fully and as soon as possible of any circumstances which might prejudice the Contractor's ability to provide the Services whether temporarily or permanently;

(ii) the Council's Representative shall be given all information and other facilities he may require ensuring that the Contractor is fulfilling its obligations under the Contract; and

(iii) all Parties will do all things reasonably within their power which are necessary or desirable to give effect to the spirit and intent of this Contract and its fundamental purpose.

53. Reasonableness

53.1 Any act, omission, decision, requirement, agreement or any other step of any kind taken by either of the Parties or the Council's Representative shall be so taken reasonably and in good faith and so as not to place an undue burden upon the Parties, and any reference (express or implied) to period, time, occasion, amount, price or any other matter shall be subject to the qualification of reasonableness, unless;

(i) in the case of any decision of the Council or the Council's Representative the Contract expressly states that the matter in question is to be decided in their or his entire, sole or absolute discretion, and in any other case the Contract otherwise requires.

54. Force Majeure

54.1 If either Party is delayed or hindered from performing any of its obligations under this Contract by a Force Majeure Event then, so long as that Force Majeure Event continues, that Party shall be excused from the full performance of such obligation but only to the extent that the Party is so delayed or hindered.

54.2 For the avoidance of doubt, a Force Majeure Event does not include industrial action by the employees of the Contractor, its subcontractors, suppliers or any other agents of the Contractor, or industrial action by any third party who is not a Party to the Contract, nor does it include inclement weather conditions, other than natural floods or exceptionally adverse weather conditions likely cause an interruption to the provision of the whole or part of the Services. In all such events the Contractor will remain liable for the complete and proper delivery of the Service as specified in the Contract.

54.3 On the occurrence of a Force Majeure Event, the affected Party shall notify the other Parties as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect.

54.4 As soon as practicable following such notification, the Parties shall consult each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.

54.5 The affected Party shall notify the other Parties 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.

Following such notification, this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

54.6 A Party shall not be deemed to be in breach of this Contract, or otherwise be liable to another, by reason of any delay or failure in performance of any of its obligations under the Contract, to the extent that the delay or failure is caused by a Force Majeure Event relating to it and time for performance shall be extended accordingly.

54.7 For so long as the Contractor's obligations are suspended pursuant to this Clause 54, the Council's corresponding payment obligations to the Contractor shall also be suspended and the Council shall be entitled to make alternative arrangements for the provision of the Services.

55. Successors

55.1 The provisions of the Contract are binding on any successors in title of the Parties.

56. Standing Orders

56.1 The Contractor shall comply with the requirements of the Standing Orders and Procedures for Good Governance of the Council for the time being in force insofar as they apply to the performance of the Contract and which are available for inspection during Normal Working Hours by prior appointment with the Council's Representative at the Council addresses as stated herein at Clause 1 or available on their website

57. Service Delivery Plan

57.1 The Contractor is required to prepare and submit to the Council a Service Delivery Plan (including appropriate Method Statements) and to implement and maintain the Plan in contemporary order throughout the Contract Term.

57.2 The purpose of the Plan is to set out the Contractor's arrangements for the delivery of Services specified in the Contract.

57.3 Any statements made within the Contractor's Service Delivery Plan in respect of, among other things, the performance of plant or equipment must be fully supported by sufficient documentary evidence to enable the Council's Representative to assess the validity of the statements. The methodology used to support such statements must conform to relevant industry standards (where applicable) and any assessment models or criteria laid down by a competent or regulatory authority.

57.4 The Plan will be fully cross-referenced, where appropriate, to other Plans prepared by the Contractor and be produced in a format that permits section-by-section replacement and amendment as necessary during the Contract Term.

57.5 Amendments to the Plan will be carried out as and when appropriate e.g. as facilities and/or working practices are introduced or modified, and as agreed and approved by the Council's Representative prior to implementation.

57.6 The Service Delivery Plan will be made available upon request to the Council's Representative and any other Officer of the Council nominated by him and the Council's Representative will be provided with any modifications or amendments made to the Plan during the Contract Term as soon as they are available.

57.7 The following is a non-exclusive outline list of the elements that should be included within the

Service Delivery Plan as a minimum: -

(i) details of the various services that will be provided by the Contractor;

(ii) details of all working and other resources to be deployed on the Service;

(iii) details of Method Statements to be used in the delivery of all of the Services;

(iv) details of all supervisory management systems and processes to be employed;

(v) details of the approved Quality Management System to be employed;

(vi) details of all health & safety procedures (including appropriate generic risk assessments), plans and policies, environmental protection and workplace plans, policies and procedures to be introduced and operated;

(vii) details of mobilisation and 'bedding-in' plans and procedures;

(viii) details of all maintenance and ‘housekeeping’ procedures and schedules as appropriate;

(ix) details of performance monitoring and updating arrangements for the Plan;

(x) resilience details for the maintenance of the Service in the event of, but not limited to, restrictions on or the unavailability of fuel for the Contractor's vehicles, plant and equipment necessary for the performance of the Service; and

(xi) details regarding the provision and operation of the Authorised Treatment Facility.

58. Mobilisation, Contingency and Expiry Arrangements

58.1 The Council will require a seamless transition between existing services, the new Services provided by the Contractor and the handover of these on Contract expiry.

58.2 The Contractor shall: -

(i) produce and implement a Mobilisation Plan that details takeover and management of the existing service over the period from the notification of Contract award to full operation as detailed in the Contractor's Service Delivery Plan.

(ii) produce and implement a Contingency Plan that makes arrangements for the continuation of the Service, or any part thereof, in the event of the unavailability of a key facility or equipment or some other reasonably foreseeable event that could jeopardise the performance of the Services.

(iii) produce and implement an Expiry Plan for the hand back of the Services at the Contract expiry or any earlier termination date.

59. Mobilisation Plan

59.1 The Contractor shall provide for a smooth hand-over from all existing arrangements, clearly set out in its Mobilisation Plan. This will specify an agreed set of activities and a timetable for all significant events from the award of the Contract up to the first three months of the Contract.

60. Contingency Plan

60.1 The Contractor shall submit to the Council a Contingency Plan that details how each aspect of the Services will be operated in the event of any site or service being unavailable on a permanent or temporary basis.

61. Expiry Plan

61.1 The Contractor shall provide for a smooth hand-back at the expiry or early termination of the Contract, clearly set out in an Expiry Plan. This shall specify an agreed set of activities and a timetable between the Contractor and the Council's Representative for all significant events leading up to the hand-back of the Services to the Council.

61.2 The Contractor shall hand back all premises, facilities, equipment or plant provided by the Council during the Contract in an agreed physical and operational state having regard to the condition that these were taken over by

the Contractor at the commencement of the Contract and allowing for normal 'wear and tear'.

62. Right to Withdraw

62.1 The Contractor acknowledges that Bournemouth, Christchurch and Poole Council may by notice to the Contractor withdraw from the Contract at any time during the Contract Term and that such notice of withdrawal will constitute a Variation to the Contract and be dealt with accordingly.

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SCHEDULE 1 – DEFINITIONS

In the Contract the following terms shall have the meanings given to them below:

2020 Contract means the Contract for Services entered into between the Contractor and the Council for the recovery and disposal of abandoned vehicles commencing on …….. and extended by agreement and whose schedules as updated from time to time shall form part of this Contract to the extent they are still relevant to the Services and do not conflict with it in which case this Contract and its terms shall have precedence.

Abandoned vehicle means any vehicle or part thereof which in the opinion of an authorised officer of the Council has been abandoned without lawful authority on any land in the open air or on any other land forming part of a highway.

Abandoned Vehicle Release Notice means any written notice prescribed by the Council authorising the Contractor to release a vehicle to its lawful owner.

Accounting Period means a period of one month unless otherwise specified in the Contract.

Agreement means this Contract.

Anniversary shall be the first anniversary of the Commencement Date and each subsequent year thereafter until the expiry of the Contract.

Assets mean together the assets of the Council and the Contractor.

Assigned Employees means any person employed by the Contractor or by any Sub-Contractor who is engaged wholly or mainly in connection with and who is assigned to the provision of the Service or that part of which is transferring under a Relevant Transfer or who would have been employed if he had not been dismissed in circumstances described in Regulation 7 (1) of the TUPE Regulations 2006.

Authorised Person means the Council for the purposes of (and as defined in) The Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997 (as amended).

Authorised Treatment Facility means any establishment or undertaking carrying out treatment operations which holds an environmental permit authorising those operations granted under regulation 13(1) of the Environmental Permitting (England and Wales) Regulations 2016 for the reception, storage and de-pollution of end-of-life vehicles.

Bank Holiday means the eight days each year that are standard national holidays in England and Wales, namely New Year's Day, Good Friday, Easter Monday, the first Monday in May, the last Monday in May, the last Monday in August, Christmas Day and Boxing Day or any other day adopted throughout England and Wales as a Bank Holiday.

BCP Council means the area under Bournemouth, Christchurch and Poole Council.

Change in Law means the coming into effect after the Commencement Date of any Law or any amendment or variation to any Law having a bearing on the Contract.

Commencement Date means the date from which the Contractor is obliged to commence providing the Service being 0000 hrs on **[X]** 2020.

Conditions of Contract (the Conditions) means these Conditions of Contract, the Schedules (including the Specification and priced Schedule of Rates) together with any additional or supplementary documents bound

into the Contract as Contract Documents.

Contingency Plan means a plan prepared by the Contractor in accordance with the provisions of Clause 60.

Contract means this Agreement including all Schedules and Variations thereto.

Contractor means the person or persons, firm or company to whom the Contract has been awarded by the Council and includes the Contractor's personal representatives, employees, successors, agents and sub-contractors.

Contract Documents means the pre-tender documentation from the 2020 Contract and its tender documents, the Conditions, the Form of Agreement, the Schedules (including the priced Schedules of Rates and the Specifications) and all Council responses to queries.

Contract Price (Contract Sum) means the sums payable by the Council to the Contractor for the provision of the Service.

Contractor's Assets means any assets, including premises, plant and equipment (whether fixed or mobile) provided by the Contractor for the performance of the Services.

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

Contractor's Representative means the person appointed by the Contractor in accordance with Clause 7 of these Conditions.

Contract Term means the entire Term of the Contract.

Council means Bournemouth, Christchurch and Poole Council and any successor authority thereof.

Council's Representative means the Head of Traffic Management - Planning, Transport and Regulation Services of the Borough of Bournemouth or any other officers of the Council duly appointed by him to act on his behalf.

Cost means the overall cost inclusive of all overheads, on-costs, losses and profits, but exclusive of Value Added Tax, unless expressly stated as otherwise.

Data Controller, Data **Processor**, **Process**, **Processing**, **Data Subject**, **Personal Data**, **Personal Data Breach**, **Data Protection Officer**, take the meaning given in the GDPR and their cognate terms shall be construed accordingly.

Data Loss Event shall mean any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Protection Legislation means (i) unless/until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK (ii) any successor legislation to the GDPR or the Data Protection Act 1998; the LED and any Applicable national implementing Laws as amended from time to time; the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) Applicable Law about the processing of personal data and privacy which includes The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), The Electronic Communications Data Protection Directive 2002/58/EC, The Privacy and Electronic Communications (EC Directive) Regulations 2003.

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

Data Subject Access Request means a request made by, or on behalf of, a Data Subject in accordance with rights

granted pursuant to the Data Protection Legislation to access their Personal Data.

Default has the meaning given to it in Clause 30.2.

Default Notice means a notice in writing issued in respect of a failure to perform any part of the Service or to act in an appropriate or timely manner upon the service of a Remediation Notice as provided in the Contract.

Dispute has the meaning given to it in Clause 41 of the Contract.

DPA 2018 means the Data Protection Act 2018.

Employee Information means all information listed in Schedule 5 to be provided by the Contractor in accordance with the provisions of Clause 46 of the Contract for the purpose of determining the cost of a relevant transfer of employees under the TUPE Regulations 2006.

Environment means all or any of the following media namely air, water (including without limitation surface and ground waters), land (including without limitation sub-service strata and sea or riverbeds) and any natural or artificial structures.

Environmental Law means all laws both common law and statute law (whether UK, European Community or International Law), circulars, orders, codes of practice, guidance and practice notes, all relating to pollution or protection of the environment or human health.

Equipment means all tools, implements, instruments, machinery and containers required in undertaking the Services.

Estimate means the aggregate of any estimated increased operating costs, capital costs and financing costs less the aggregate of any reduced operating costs, capital costs and financing costs.

Expiry Date means the date of the natural expiry of the Contract Term, being 2359 hrs on the last day before the 1st anniversary of the Commencement Date or such earlier date in accordance with the provisions of the Contract, unless the Contract is extended in accordance with the provisions of the Contract and in compliance of procurement law.

Expiry Plan means a plan prepared by the Contractor in accordance with the provisions of Clause 61.

Force Majeure Event means war, natural flood, exceptionally adverse weather conditions, civil disorder, Act of God, power cuts or delays or without limitation other event(s) outside the control of the Parties which could not have been reasonably foreseen or avoided.

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

Index means the Consumer Price Index (CPI) referred to in Clause 25 of the Contract or any other index agreed between the Parties.

Intellectual Property Rights means all copyright, trademark or patent rights, registered and unregistered design rights, service marks and all other intellectual or industrial or commercial property rights howsoever caused.

Irredeemable Default has the meaning given to it in Sub-Clause 31.1.

Irredeemable Default Notice issued by the Council's Representative in accordance with and containing the information set out in Clause 31.2.

Council means the Bournemouth, Christchurch and Poole Council.

Law means any applicable statute or delegated or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, any enforceable community rights within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy where expressed to confer rights and

obligations, duly applicable/mandatory guidance, code of practice, direction, judgement or determination with which the Council and/or the Contractor is bound to comply [but see Data Protection Legislation above as well].

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

Method Statements means the Method Statements contained within the Service Delivery Plan, which shall be sealed into the Contract and used to monitor the Contractor's performance of the Contract.

Mobilisation Plan means a plan prepared by the Contractor in accordance with the provisions of Clause 59 and outlined in the Service Delivery Plan dealing with the means to be adopted by the Contractor in preparation for the commencement of the Contract.

Month means a calendar Month.

Necessary Consents mean all approvals, certificates, exemptions, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

Normal Working Hours means any time between the hours of 0800hrs to 1630hrs during the Working Week unless otherwise agreed in writing between the Parties.

Party means a Party to this Agreement.

Performance Criteria means the criteria that will be used by the Council and the Contractor to measure the performance of the Contract as set out in Schedule 3.

Persistent Breach means where together 2 or more Default Notices or 5 or more Remediation Notices are recorded in any four-week period.

Plant means vehicles, plant and any other equipment, whether mobile or not, used for the performance of the Contract.

Premises mean the Council's premises or the Contractor's premises as the context requires.

Prohibited Act means any of the following:- (i) the offering or giving to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do any act in relation to the obtaining or execution of the Contract or any other contract with the Council, save in respect of payments made to a Sub-Contractor in the normal course of the Contract or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other contract with the Council; (ii) committing any offence under the Bribery Act 2010 c. 23; or (iii) giving any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972.

Protective Measures (regarding the Data clauses and GDPR) mean appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Quality Management System means a system of quality management to be adopted by the Contractor in accordance with the provisions of Clause 28 (Quality Assurance).

Regulatory Body means the Driver and Vehicle Licensing Agency (DVLA), the Environment Agency, the Department for Environment, Food and Rural Affairs, the European Commission or any other regulatory authority (other than the Council) including the Health & Safety Executive and any statutory water undertaker or drainage authority with power to regulate the Service and/or the Contract and their respective successors and substitutes.

Relevant Transfer Date means any date upon which a Relevant Transfer takes place.

Relevant Transfer means a relevant transfer to the Council or a new Contractor of any of the Services or part thereof at any time during the Contract Period or at the end of the Contract Period or on the date of early termination of the Contract.

Remediation Notice means a notice issued by the Council's Representative to the Contractor setting out the nature of the Default and the timeframe for remediation in accordance with Clause 30.

Reportable Incident includes any incident, accident (whether or not reportable under RIDDOR) or occurrence which has resulted in, or could result in, injury (including risk of injury), danger or harm to the Contractor's employees, Council's staff or members of the public arising from the performance of the Contract or any incident or occurrence which has or could give rise to a complaint, claim or legal proceedings in respect of the Service provided by the Contractor under the Contract.

Required Insurances has the meaning given to it in Clause 19.

RIDDOR means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 together with any replacements or amendments thereto.

Schedule of Rates means the schedules of prices set out in Supplier Response-Part D- Pricing Evaluation.

Service(s) means all the service(s) to be provided by the Contractor under the Contract and includes the whole of the works to be executed, including where appropriate the provision of all Plant and Equipment by the Contractor.

Service Delivery Plan means the Plan prepared by the Contractor detailing its proposed method of service delivery in accordance with the provisions of the Contract.

Site Incident Log means the written record of incidents and events at any site or location where a reportable incident takes place.

Specification means the Specification and description of the Services required by the Contract and any variation attached hereto at appendices A1, A2 and A3

Sub-processor means any third Party being any person appointed by or on behalf of the Contractor to process Personal Data on behalf of the Contractor related to this Agreement being to Process Personal Data on behalf of the Council in connection with the Contract.

Staff means any employee, worker or agent of, or other person from time to time engaged or employed by the Contractor or any Sub-Contractor in connection with the provision of the Service.

Sub-Contractor means a person to whom the Contractor sub-contracts the whole or part of the provision of the Service in accordance with Clause 9 (Assignment, Novation and Sub-Contracting) and references to "Sub-Contract" and "Sub-Contracting" shall be construed accordingly.

Tender for the purposes of this Contract means the Tender completed by the Contractor and submitted to the Council as specified in the Instructions to Tenderers in 2020.

Tenderer means the Contractor completing the Contract Documents.

Tendered Rates means the rates priced by the Contractor at Supplier Response-Part D- Pricing Evaluation.

Termination Notice means the Notice served by the Council's Representative on the Contractor leading to termination of the Contract resulting from failures in performance as provided for in the Contract.

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

Variation means any variation to the Contract (including to the Performance Standards and Performance Criteria) or to the Services.

Variation Notice means a Notice issued by the Council's Representative in accordance with the provisions of Clause 34 and Schedule 2 (Variation Procedure).

VAT means value added tax or any substituted tax.

Vehicle means a mechanically propelled vehicle or part thereof intended or adapted for use on roads, whether or not it is in a fit state for such use and includes any trailer, bogey or caravan intended or adapted for such use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and/or anything attached to such a vehicle or trailer.

Warning Notice means the notice served by the Council's Representative on the Contractor resulting from failures in performance of the Service as provided for in Clause 30.10.

Waste includes any class of material included within the scope of Section 75 of the Environmental Protection Act 1990 and The Controlled Waste (England and Wales) Regulations 2012/811 (formerly The Controlled Waste Regulations 1992).

Week means a period of seven days with Monday being the first day and Sunday being the last day.

Working Week means Monday to Friday 0800hrs- 1630hrs inclusive, excluding Bank Holidays.

SCHEDULE 2- VARIATION PROCEDURE

1. Council Variation

1.1 If the Council requires a Variation it shall serve a Variation Notice on the Contractor in accordance with the provisions of this paragraph 1.

1.2 The Variation Notice shall:

1.2.1 set out the Variation required in sufficient detail to enable the Contractor to calculate an Estimate in accordance with Clause 34.7 of the Contract; and

1.2.2 specify the time period for the Contractor to provide the Estimate and, in setting such period, the Council shall pay due regard to the nature of the proposed Variation.

1.3 The Contractor shall as soon as practicable and in any event before the expiry of the period referred to in paragraph 1.2.2 above, deliver to the Council's Representative an Estimate together with a statement by the Contractor confirming:

1.3.1 the impact on the provision of the services;

1.3.2 amendment(s) required to the Contract;

1.3.3 loss of revenue that may result; and

1.3.4 additions or variations required to any Necessary Consent as a result of Variation proposed by the Council.

1.4 As soon as practicable (but in any event within 30 days) after the Council's Representative receives the Estimate and statement, the Parties shall discuss and agree the matters set out therein, including, but without limitation, the work to be undertaken, changes in the Service and amendments to the Contract Price.

1.5 If the Parties cannot agree the contents of the Estimate then the Council's Representative shall either;

1.5.1 withdraw the Variation Notice; or

1.5.2 refer the dispute to be determined in accordance with Clause 41 (Settlement of Disputes).

1.6 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to Clause 41, the Council's Representative shall either:

1.6.1 confirm in writing the Estimate (including any modification or amendments made to it); or

1.6.2 withdraw the Variation Notice.

2. Contractor Variation

2.1 If the Contractor wishes to introduce a Variation, it must serve a Variation Notice on the Council in accordance with the provisions of paragraph 2.

2.2 The Contractor's Variation Notice must

2.2.1 set out the proposed Variation in sufficient detail to enable the Council’s Representative to evaluate it;

2.2.2 specify the Contractor's reasons for proposing the Variation;

2.2.3 indicate whether an adjustment to the Contract Price is proposed and if so to give a detailed Estimate calculated in accordance with Clause 34.7 of the Contract;

2.2.4 indicate if there are any dates by which a decision by the Council's Representative is critical; and

2.2.5 set out the timetable for implementing the proposed Variation.

2.3 The Council's Representative shall evaluate the Contractor's proposed Variation in good faith, taking account of all relevant issues, including whether:

2.3.1 the Variation is required as a result of the operation of Clause 34.1 (Variations to the Service) of the Contract or a Change in Law;

2.3.2 a change in the Contract Price will occur;

2.3.3 the Variation affects the quality of the Service(s) or the likelihood of successful delivery of the Service(s);

2.3.4 the Variation will interfere with the relationship of the Council with third parties;

2.3.5 the financial strength of the Contractor is sufficient to perform the proposed Variation;

2.3.6 whether the Variation materially affects the risks or costs to which the Council are exposed.

2.4 As soon as practicable after receiving the Contractor's Variation Notice, the Representatives of the Parties shall meet to discuss the matters referred to in it. During their discussions the Council's Representative may propose modifications or accept or, subject to Clause 34.5 of the Contract, in his absolute discretion reject the Variation proposed in the Contractor's Variation Notice.

2.5 If the Council’s Representative accepts the Contractor’s Variation Notice (with or without modification}, the relevant Variation shall be implemented by the Contractor within such reasonable period as shall be specified by the Council's Representative in his acceptance. Within this period, the Representatives of the Parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend the Contract which are necessary to give effect to the Variation.

2.6 If the Council's Representative rejects the Contractor's Variation Notice, he shall not be obliged to give his reasons for such a rejection and the Contractor shall not be entitled to refer the matter for determination under Clause 41 (Settlement of Disputes).

SCHEDULE 3 – PERFORMANCE CRITERIA

The criteria listed below will be used by the Council's Representative to determine the performance of the Contractor in the delivery of the Services. The list is not intended to be exhaustive and will be amended or supplemented from time to time at the discretion of the Council's Representative.

I. Full compliance with all aspects of the Service Delivery Plan.

II. Operation of all facilities, plant and equipment used to deliver the Services in a professional, competent and A sustainable manner so as to minimise their impact on the environment.

III. Nomination of a suitably experienced and competent contract manager.

IV. Informing any relevant changes in management arrangements or key staff

V. Provision of staff with sufficient up to date qualifications, skills and abilities.

VI. Staff adherence to good and safe working practices.

VII. Staff to be properly presented, equipped and trained.

VIII. Staff to deal with members of the public and other persons in a courteous, obliging and helpful manner and in accordance with this contract

IX. Attendance of senior staff at regular Contract management and review meetings.

X. Notification to the Council's Representative of any significant or relevant defaults.

XI. Maintenance of accurate written and electronic records.

XII. Full compliance with all monitoring and reporting requirements.

XIII. Immediate communication with the Council's Representative or another nominated Council Officer in the event of an accident, serious incident involving a ‘near miss’ or any other incident whether or not it has or might jeopardise or impair the performance of the Services.

XIV. Maintenance of an up to date Site Incident Log made readily available for inspection by the Council's Representative, authorized Officers or agents and other regulatory or statuary agencies

XV. Recording and reporting all significant incidents and shortcomings in performance in the Site Incident Log

XVI. Provision of all required information in advance of regular Contract Management & Review meetings.

XVII. Correction of inadequate or erroneous information.

XVIII. Revisions to the Service Delivery Plan.

XIX. Submission of invoices within Contract timescales.

XX. Response to all correspondence from the Council's Representative, a member of the public or regulatory agency in a timely and forthright manner.

XXI. Adherence to adopted Quality Assurance systems.

SCHEDULE 4– REPRESENTATIVES OF THE PARTIES

Council's Representative	Richard Pincroft Head of Transportation Growth and Infrastructure Town Hall Annexe St Stephens Road Bournemouth Dorset BH2 6EA richard.pincroft@bcpcouncil.gov.uk Tel: 01202 262020 Mob: 07443427385
Officers nominated by the Council's Representative	Richard Pearson Traffic Manager Town Hall Annexe St Stephens Road Bournemouth Dorset BH2 6EA richard.pearson@bcpcouncil.gov.uk Tel:01202 451461 Mob:
	Robert Hotchkiss Highway Enforcement Officer Town Hall Annexe St Stephens Road Bournemouth Dorset BH2 6EA robert.hotchkiss@bcpcouncil.gov.uk Tel: 01202 454903 Mob: 07810 185100
Contractor's Representative	Contractors Details

SCHEDULE 5- EMPLOYEE INFORMATION

List of information required for the purposes of costing for possible TUPE in respect of each employee identified as potentially subject to a relevant transfer in accordance with the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1. Number of employees (full time, part time, casual, agency) working on the provision of the Service that are likely to fall within the scope of the TUPE Regulations.

2. Degree to which individual employees actually undertake the work subject to transfer under the Regulations and details of other work undertaken for the Contractor.

3. Details of all contractually binding terms and/or conditions of employment including any impending changes thereto.

4. Details of any relevant collective employment arrangements currently in effect or to be introduced.

5. Details of current employment policies (both contractually binding and non-contractual).

6. Details of all relevant probationary periods of employment currently in effect.

7. Normal retirement age for employees' subject to transfer.

8. Ages and genders of individual employees' subject to transfer.

9. Periods of Notice for staff subject to transfer.

10. Details of current pay and other salary arrangements for employees' subject to transfer, including any pay settlements yet to come into effect and individual employee pay and salary rates.

11. Details of regular, planned and unplanned overtime and pay rates.

12. Details of pay-related benefits, including productivity bonuses and other individual enhancements (remunerations and/or benefits in kind).

13. Details of annual leave arrangements and any un-utilised holiday entitlements.

14. Details of sick leave arrangements.

15. Details of maternity/paternity leave arrangements.

16. Details of any special leave arrangements not included in the above.

17. Details of applicable Continuous Service Dates.

18. Details of hours of work and shift patterns.

19. Details of current and pending employee pension arrangements.

20. Details of all sporting, social, welfare or other facilities that may be asserted to be employment benefits.

21. Details of time and other facilities provided for trade union officials and health & safety representatives.

22. Confirmation that there are no arrears of pay, contractual bonus or benefit payments outstanding.

23. Details of any existing, pending or potential claims against the company by employees' subject to transfer relating to, for example, negligence, unfair dismissal, race discrimination, sex discrimination, disability discrimination, age discrimination, unlawful deductions from wages, health & safety issues, personal injury claims.

24. Pending or potential actions against the company by any statutory or regulatory agency in respect of or likely to affect employees subject to transfer.

25. Details of any other matter not included in the above that might confer on the company a duty, right or liability in respect of or likely to affect employees subject to transfer.

SCHEDULE 6 – FORM OF AGREEMENT

Contract for the Recovery and Disposal of

(i) Abandoned Vehicles and

(ii) Unlicensed Vehicles

THIS AGREEMENT is made the …….…… day of ……2020

Between

(I) The Bournemouth, Christchurch and Poole Council of the Town Hall, Bourne Avenue, Bournemouth, Dorset, BH2 6DY (the Council); and

(II) Contractor

each referred to as a "Party" and together the "Parties".

WHEREAS
The Council have awarded the Contract to the Contractor for the provision of the Service as described in the Contract, it is now hereby agreed as follows:

1. this Contract constitutes the sole agreement between the Council and the Contractor for the provision by the Contractor of the Services and shall comprise of the following documents together with this Agreement, the Conditions of Contract, the Schedules (including the Service Specifications and the Schedules of Rates) and any Appendices further describing the Services;

2. the Contractor shall provide the Service in accordance with the provisions of the Contract and to the satisfaction of the Council;

1. so long as the Contractor shall continue to provide the Services in accordance with the provisions of the Contract and to the satisfaction of the Council's Representative, the Council shall make payments to the Contractor at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed as a Deed the day and year first above written.

EXECUTED AS A DEED BY THE BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL

affixing the common seal in the presence of:

Signature:

Name:

Position:

EXECUTED AS A DEED BY AFFIXING THE COMMON SEAL of

in the presence of:

Signature:

Full Name: Position:

OR

SIGNED AS A DEED by

1. Signature: ……..

   Full Name: ……..

   Position: Director/Secretary (delete as appropriate)

2. Signature: ……..

   Full Name: ……..

   Position: Director/Secretary (delete as appropriate)

SCHEDULE 7 -CANVASSING

I thereby certify that I have not canvassed or solicited any Member, Officer or employee of the Council in connection with the award of this Contract or any other contract or proposed award of the Contract for the Services and that to the best of my/our knowledge and belief no person employed by me/us or acting on my/our behalf has done any such act.

I further hereby undertake that I will not in the future canvass or solicit any Member, Officer or employee of the Council in connection with this Contract or any other contract or proposed contract for the Services and that no person employed by me/us or acting on my/our behalf will do any such act.

Signed (1) …….. Status ……..……

Signed (2) ……... Status ……..

For and on behalf of .....

Date .....

SCHEDULE 8

GDPR AND DATA PROCESSING

[including the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of personal data and categories of Data Subject**]**

Schedule of Processing, Personal Data and Data Subjects

1. The Contractor shall comply with any written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Schedule.

PROCESSING BY THE CONTRACTOR

A. Scope Description Details

Subject matter of the processing

Information on all Abandoned, Unlicensed vehicles that have been reclaimed by the registered keeper or other person(s), from the Contractors storage facility. All data is only to be accessed by authorized personal.

B. Duration of the processing

Data to be held for approximately 2 years as per the Authorities policy.

C. Nature and purposes of the processing

Retention of this information is necessary for any further communication from the DVLA and/or registered Keepers involving the vehicle which was held by the Authority/Contractor, due to it being removed from the Highway as an abandoned or unlicensed vehicle.

D. Type(s) of Personal Data

Data will be kept on the names, addresses and telephone numbers of a vehicles registered keeper or other person(s) recovering the vehicle from the Contractors Storage Facility on their behalf.

E. Categories of Data Subject

Registered keeper's data will be collected and stored for all vehicles that are to be reclaimed by the Registered Keeper from the Contractors storage facility.

F. Termination Provision

Plan for return and destruction of the data once the processing is complete UNLESS there is a requirement under EU or member state law to preserve that type of data or at the written direction of the Council, the Contractor shall delete or return Personal Data and copies thereof to the Council on termination of the agreement unless required by Applicable Law to store the Personal Data

Data is to be stored in files in a secure cabinet or on electronic files. Data is to be kept for approximately two (2) years, it will then be disposed of both electronically and shredded as in accordance with the Authorities policy.

Appendix 1

MIS743 DVLA Devolved Powers-Wheelclamping Case Update

Appendix 2

INF32 DVLA Wheelclamping and Removing Vehicles

Appendix 3

CLE1213 DVLA Vehicle Condition Report Form

Appendix 4

CLE1214 DVLA Vehicle Release Receipt