

**TERMS AND CONDITIONS FOR Tender for Green Waste**

**PROVIDERS MAY SUGGEST AMENDMENTS TO THESE TERMS AND CONDITIONS IF THEY BELIEVE THAT THEY ARE ESSENTIAL; HOWEVER, THE COUNCIL WILL NOT NECESSARILY ACCEPT SUCH AMENDMENTS AND RESERVES THE RIGHT TO INCORPORATE THE TERMS AND CONDITIONS AS PUBLISHED.**

**THE COUNCIL AUTHORITY RESERVES THE RIGHT TO ALTER THE BRIEF SPECIFICATION AND TERMS AND CONDITIONS PRIOR TO AWARD, AND WITH THE AGREEMENT OF THE PREFERRED PROVIDER, IF NECESSARY**

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| **Tender for Green Waste for the Borough of Melton and Leicestershire County Council**  |

**Part 2**

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**THIS AGREEMENT** is made the                  day of                       **2018**

**BETWEEN**

1. MELTON BOROUGH COUNCIL whose principle office is the Council Offices Phoenix House, Nottingham Road, Melton Mowbray, LE13 0UL
2. LEICESTERSHIRE COUNTY COUNCIL whose principal office is County Hall, Glenfield, LE3 8RA
3. [SUPPLIER NAME AND REGISTERED ADDRESS TO BE INSERTED]

**BACKGROUND**

1. The Authorities are the waste collection authorities respectively for the purposes of the Environmental Protection Act 1990.
2. The Authorities published a contract notice in the Official Journal of the European Union
3. The Authorities short listed bidders on the basis of their responses to the Authority pre qualification questionnaire.
4. Following receipt of tenders from shortlisted bidders the Authorities selected the Provider (but not as the sole provider), based ultimately on the Provider’s responses to the Authorities' request for tenders.
5. The Services to be provided to one or more of the Authorities
6. The Provider has agreed to provide the Services in accordance with the terms and conditions of this Agreement.

# PRELIMINARY

###### Definitions and Interpretation

In the Agreement, unless the context otherwise requires, words shall have the meanings set out in and shall be interpreted in accordance with Clause 18 Definitions and Interpretation.

###### Commencement and Duration of Agreement

### The Agreement shall commence on the date of this Agreement and, unless terminated at an earlier date in accordance with the provisions herein, will continue in force until the expiry of the Initial Term and for the period of any extension to the Initial Term made in accordance with clause

### The term of the Agreement is for 36 months (Initial Term) with at the discretion of the Authorities to further extend the term making a potential contract term of 10 years.

### The Authorities by joint written agreement only shall have the option to extend the Initial Term for a period of up to 7 years by one 3 year extension and one possible subsequent 4 year extension subject to the consent of both Authorities. Written notice to such effect will be raised with the Provider no later than six (6) months prior to the expiry of the Initial Term. Decision to extend will take in to consideration, performance, finance and the Authorities waste strategy.

###### Parent Company Guarantee

On or prior to the Commencement Date the Provider shall provide:

### if required by the Authorities, at the Authorities discretion, a Parent Company Guarantee from its ultimate parent company (as defined in Section 736 of the Companies Act 1985) in the form attached at Schedule 7.

# THE SERVICE

## The Provider agrees to provide the Services from the Commencement Date with all reasonable skill, prudence and foresight and in accordance with:

### the terms of the Agreement;

### the requirements of all Necessary Consents;

### all applicable Laws;

### the Specification;

### any reasonable instructions of the Authorised Officer acting in good faith.

## Without prejudice to clause 2.1, the Provider shall at all times comply with:

### its duty of care under Section 34 of the EPA; and

### its duties and the conditions placed upon the Provider in accordance with the Waste Management Licence.

## The Provider shall be responsible for the lawful treatment and disposal (including all costs thereof) in accordance with the Specification of all Contract Waste received by it from the Client pursuant to this Agreement (except for rejects in accordance with clause 2.4.1).

###### Acceptance Criteria

### **Melton Borough Council** (MBC)**:** The Provider shall be entitled to reject any Contract Waste delivered by MBC that does not meet the Acceptance Criteria (in excess of 10% of the total delivered in that specific load) only in accordance with the provisions of clause 2.5.

### 2.4.2 **Leicestershire County Council** (LCC): The Provider shall be entitled to reject any Contract Waste delivered by LCC that does not meet the Acceptance Criteria (in excess of 10% of the total delivered in that specific load) only in accordance with the provisions of clause 2.5. LCC is under no obligation to provide any guarantee or minimum commitment in relation to tonnage under this agreement. The Client shall remove from the Premises any Contract Waste that is rejected pursuant to this clause 2.4.1 & 2

### Any Contract Waste that does not meet the Acceptance Criteria and is rejected pursuant to clause 2.4.1&2 shall not count towards any calculation of tonnages of Contract Waste for the purpose of the Contract Price payable.

###### Rejection of Contract Waste

### In order to determine whether the Contract Waste supplied to the Provider under this Agreement meets the Acceptance Criteria, the Provider will inspect the Contract Waste in accordance with their stated method. Where a load is contaminated beyond 10% (Melton Borough Council) and 5% (Leicestershire County Council) the Provider will provide photographic evidence of the contamination and the Authorities’ representative will inspect to agree the contamination and reject as unacceptable..

### On agreement that a load was contaminated the Provider shall endorse the weighbridge ticket accordingly, and isolate the load of Contract Waste in question

### Any Contract Waste rejected in accordance with Clause 2.5.1&2 shall be removed from the Premise by the Authorities at its own cost as soon as practicable after notification of rejection. All transportation costs and ancillary charges for removal shall be the responsibility of the Client. The Client will require assistance of the Contractor to reload the Client vehicles to remove the waste.

###### Force Majeure

### If either party is delayed or hindered in or prevented from performing any of its obligations under the Agreement by a Force Majeure Event then, for so long as that Force Majeure Event continues and provided that that party is complying with the provisions of this clause 2.6, that party shall be excused from performance of such obligation to the extent that party is so delayed, hindered or prevented.

### On the occurrence of a Force Majeure Event, the affected party shall notify the other party 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.

### As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Agreement and the Provider shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

### The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under the Agreement. Following such notification the Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

### Neither party shall be deemed to be in breach of the Agreement, or otherwise be liable to the other by reason of any delay or failure in performance of any of its obligations under the Agreement, 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.

### For so long as and to the extent that the Provider’s obligations are suspended as a result of a Force Majeure Event:

#### the Authorities' corresponding payment obligation shall be reduced by an amount equal to the part of the payment obligation attributable to the Provider’s suspended obligation; and

#### the Authorities shall be entitled to make alternative arrangements for the provision of the Service.

# ADMINISTRATION

## **Variations** **to the Service**

###### Authority Variations

### Subject to clause 3.2..1 the Authorities shall be entitled to propose a Variation. This must be in writing and issued within 30 Days of any proposed Variation. Any Variation must be agreed with both Parties.

### The Authorities shall not propose a Variation which:

#### infringes any Law; or

#### would require the Provider to apply for an unobtainable amendment to a Necessary Consent, or an unobtainable new Necessary Consent; or

#### would materially and adversely affect the Provider’s ability to deliver the Services in accordance with this Agreement.

###### Provider Variations

### Where the Provider wishes to introduce a Variation, it must follow with the procedures set out in clause 3.2.1

### Unless the Authorities' acceptance specifically agrees 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 Provider.

### The Authorities shall not reject a Variation proposed by the Provider that is required in order to conform to a Change in Law.

###### Valuation and Payment

### If the Variation proposed by the Provider causes or will cause the Provider’s costs or those of a Sub-Contractor to decrease the Authorities shall benefit in the saving and adjustment in the Contract Price.

### The value of the Variation submitted by the Provider in accordance with clause shall be calculated in accordance with either:

#### Schedule 2 (Pricing Schedule) where the Variation is of a similar character to the Services currently being performed; or

#### at fair rates and prices where the Variation is not of a similar character to the Services currently being performed,

so that the Provider is in no worse or better position.

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

###### Amendments to Documentation

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 Agreement accordingly.

###### Officers and Administration

### The Authorised Officer shall liaise with and give instructions to the Provider and its Representatives in relation to all matters concerning the performance by the Provider of its obligations under the Agreement and to determine any matters or issue any notices as may be the function of the Authorised Officer under the Agreement.

### From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods. When such an appointment is made, the Authorised Officer shall give notice in writing to the Provider.

### The Provider's Representative shall have the power on behalf of the Provider in connection with any matter relating to the performance of the Services and shall exercise the rights, functions and obligations of the Provider under the Agreement.

### To the extent it is reasonably possible the Provider shall not change the identity of the Provider's Representative without first discussing the matter with the Client and having reasonable regard to the views of the Client in relation to any proposed replacement. The Provider shall not appoint as the Provider's Representative any person who has been convicted of any offence which in the reasonable opinion of the Authorised Officer makes that person unsuitable.

### The Provider's Representative shall if required attend meetings with the Authorised Officer (on dates and at times and at the locations specified by the Authorised Officer) to review the provisions of the Service, the achievement or not by the Provider of the Performance Standards and any other matters relating to the operation of the Service.

###### The Client Authority

### On and with effect from the Commencement Date the Client shall be Melton Borough Council, and Leicestershire County Council.

### At any time during the Term the Authorities shall be entitled to change the Client to any one or more of the Authorities by serving a written notice (**"Change of Client Notice"**).

### The Change of Client Notice must be signed by each of the Authorities and shall specify:

#### the date upon which the Change of Client Notice will take effect (being not less than [seven] days after the date of the notice); and

#### which Authority/ies is/are to be the Client(s) with effect from the date of the change.

### Where there is more than one Client the provisions of clause 11 in respect of payment and invoicing shall apply subject to the following provisions:

#### each Client shall be responsible to pay the Contract Price in respect of the Contract Waste delivered by that Client; and

#### the Provider shall invoice each respective Client's Authorised Officer separately.

### No Authority shall (save where the contrary is expressed) have authority on behalf of any other Authority to exercise the powers, rights and discretions and to fulfil the duties and obligations of another Authority pursuant to the Agreement.

###### Good Faith

The parties and their Representatives shall at all times, in relation to the Agreement and the performance of the Service act in good faith and (subject to the express provisions of the Agreement) shall act reasonably.

###### Assistance in Legal Proceedings

### If requested to do so by the Authorised Officer, the Provider shall give all reasonable assistance and co-operation and provide to the Authorities any relevant information which is not confidential in connection with any legal inquiry, arbitration or court proceedings in which the Authorities may become involved, or any relevant disciplinary hearing internal to the Authorities, or any inquiry by the Local Government Ombudsman, arising out of the provision of the Services.

### Where the Provider 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 Authorised Officer in writing as soon as practicable and in any event within forty-eight (48) hours. Such notification in writing shall include all relevant information which is not confidential to enable the Authorised Officer to investigate the matter fully.

### Such information provided or assistance rendered pursuant to clauses 3.9.1 and 3.9.2 above, in whatever form, shall be at no cost to the Authorities 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.

# WARRANTIES & ACKNOWLEDGEMENTS

###### Authority Liability to be Excluded

### The Authorities and their Representatives shall not be liable to the Provider in contract, tort (including misrepresentation, negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy or misrepresentation of any information (in any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a party to the Agreement or not).

### Clause 4.1.1 shall not apply to any statement, representation or warranty made fraudulently or to any provision of the Agreement which was induced by fraud, for which the remedies available shall be all those available under Law.

###### Acknowledgements

### The Provider shall be deemed to have:

#### gathered all information necessary to perform its obligations under the Agreement; and

#### satisfied itself as to the nature and extent of the risks assumed by it under the Agreement and the accuracy of the rates and prices it has stated in the Schedule 2 (Pricing Schedule).

# PREMISES AND ASSETS

###### Necessary Consents

### The Provider must provide their original Waste Management Licence for inspection by the Authorities after acknowledgement of award of contract for their proposed site.

### Throughout the Term the Provider shall be responsible at its own cost for maintaining any Necessary Consents to deliver the Services and to use the Premises for the purpose of the Services.

###### Provider Premises

### The Provider shall be responsible for providing all Premises.

### The Provider shall:

#### obtain and maintain all Necessary Consents to use the Premises for the purpose of the Service;

#### ensure that the Premises are available for the Term;

#### be responsible for the payment of all fees, charge, rates and all other outgoings or expenses (including, but not limited to all Environmental Liability) in relation to the Premises;

#### operate, keep in good structural repair and maintain the Premises in accordance with the Specification, all Laws and Good Industry Practice; and

#### insure the Premises in accordance with the Agreement.

###### Provider Assets

### The Provider shall be responsible at its own cost for providing all Provider Assets.

### Throughout the Term the Provider shall:

#### operate, keep in good structural repair and maintain the Provider Assets in accordance with the Specification, Good Industry Practice and any manufacturer’s recommendations;

#### insure the Provider Assets in accordance Schedule 6 (Insurances); and

#### (without prejudice) to provide replacements when breakdowns occur or a Provider Asset ceases to work effectively.

###### Rights of Access

The Provider shall at all times during the Term allow the Authorities and their Representatives access on reasonable notice during normal working hours (save in the case of emergency where no notice shall be required) to the Premises for the purpose of:

### monitoring and inspecting work being performed in order to provide the Services; and

### inspecting all Provider Assets and systems and procedures used by the Provider to provide the Services.

###### Security

The Provider shall be responsible for the security of the Premises as more particularly set out in the Specification.

# PERFORMANCE AND MONITORING

###### Quality Assurance

### The Provider shall (and shall ensure that its Representatives and Sub-Contractors shall):

#### observe a policy of environmental management in its activities, products and the Services;

#### comply with all relevant environmental legislation;

#### respond promptly to requests which the Authorities may make from time to time for monitoring information on the Provider’s compliance with this clause

### The Authorities may from time to time monitor the Provider's compliance with the Duty of Care requirements under Section 34 of the EPA and associated Regulations.

###### Performance Standards

### The Provider shall throughout the Term meet or exceed the Performance Standards.

### Subject to clause 13 (Termination) and without prejudice to any other express rights or remedies set out in this Agreement the liability of the Provider for Performance Deductions, and any other deductions and/or financial liabilities pursuant to this clause 6 shall be the Client's sole financial remedy for failure to achieve any of the Performance Standards. Nothing in this clause 6.2.2 shall prevent or restrict the right of the Client to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

### The parties shall meet at least once every twelve (12) months to review the Service provided, the Performance Standards and any other matters with a view to deciding whether any improvements can be made and implemented during the contract Term

###### Provider Direct Monitoring

### Where the Provider is unable to perform the Services or any part of it at any time, the Provider shall immediately inform the Authorised Officer and confirm the same in writing giving details of the circumstances, reasons and likely duration of the delay in Services. The provision of information in accordance with this clause 7.5 shall not in any way release or excuse the Provider from any of its obligations under the Agreement.

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

### The Provider shall maintain up-to-date records of its own monitoring system and shall make these records available as part of any regular contract meetings or upon the reasonable request of the Authorised Officer.

### The scope and content of the monitoring records should be such as to assure the Authorised Officer that a true and objective assessment of performance and quality of the Service is being undertaken and that problems or potential problems are identified and corrected as early as possible.

### Without prejudice to other rights and remedies available to the Authorities, the Provider shall take any necessary action required to correct or pre-empt any problems or potential problems identified by the Authorised Officer as a result of the monitoring procedures specified in the Agreement.

###### Environmental Requirements

### The Provider shall (and shall ensure that its Representatives and Sub-Contractors shall):

#### observe a policy of environmental management in its activities, products and the Services;

#### comply with all relevant environmental legislation;

#### respond promptly to requests which the Authorities may make from time to time for monitoring information on the Provider’s compliance with this Clause 6.4.

# INFORMATION AND REPORTING

###### Provider’s Records

### The Provider shall keep and maintain written records of the procedures adopted by it in order to provide the Service and shall make the same available to the Client upon reasonable request.

### The Provider shall keep and maintain accurate written records of the Contract Waste accepted by it and the Contract Waste rejected by it pursuant to this Agreement and shall make the same available to the Client upon reasonable request.

###### Data Protection

The Authorities and the Provider shall each respectively ensure that it and its Representatives comply in all respects with the provisions of the Data Protection Act 1998 whilst in force in relation to all information made available to each other throughout the Term. Thereafter the Provider shall ensure compliance with the General Data Protection Regulation (GDPR) which comes into force on 25 May 2018; and ii) the Data Protection Act (DPA) 2018 which is anticipated to come into force (subject to Parliamentary approval) on 6 May 2018.

###### Statutory and Regulatory

### The Provider shall promptly notify the Client of any notice order or instruction issued or served on it by a Regulatory Body relating to the Service or the Agreement or any request made for information pursuant to the Information Laws.

###### Confidentiality

### The parties shall keep confidential all matters relating to the Agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matter relating to the Agreement.

###### Publicity

The Provider shall not make any press announcements or publicise the Agreement or its contents in any way without the prior written consent of the Client, which shall not be unreasonably withheld or delayed.

# INSURANCES

###### Insurance Requirements

### The Provider shall at its own cost take out and maintain the insurances pertinent to the operation of the contract (Schedule 5)and any other insurance as may be required from time to time by Law with reputable insurers of good standing within the European Union (the "**Required Insurances**"). The Required Insurances must remain in place for the Term and be effective in each case not later than the Commencement Date.

### The Provider shall ensure that the Authorities’ interests are endorsed on the insurance policies required to be maintained

# INDEMNITIES

## The Provider shall indemnify and keep indemnified the Authorities on demand against all actions, proceedings, costs, claims, demands, charges, liabilities, damages, losses (including loss of or damage to property) and expenses (including the cost of legal or professional services, legal costs being on an indemnity basis) whatsoever, whether arising in tort (including negligence), contract or breach of Law (including breach of statutory duty), arising out of or in connection with any act or omission of the Provider or its Representatives under the Agreement, save to the extent that the same is caused by or arises from the negligence, breach of contract or breach of Law by the Authorities or their Representatives under the Agreement.

## Notwithstanding any other provision of the Agreement neither party will be liable to the extent permitted by Law to the other party in connection with the Agreement and/or any documents entered into pursuant to or in connection with the Agreement for any loss of profit, revenue, anticipated savings, use, goodwill or business opportunities (in each case whether direct or indirect) or for any indirect, special or consequential loss or damage.

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

## Notwithstanding any other provision of the Agreement no party limits or excludes its liability for:

### fraud or fraudulent misrepresentation;

### loss of or damage to property; or

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

# HEALTH AND SAFETY

## The Provider shall ensure that all health and safety matters concerning the Agreement are dealt in accordance with:

### the Health and Safety Policy; and

### the Health and Safety at Work etc Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons.

## The Provider shall:

### conduct the Services so as to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Authorities' Representatives and the Provider’s Staff; and

### accept full responsibility for all aspects of health and safety while performing the Services.

## The Client and the Provider shall throughout the Term conduct regular reviews and audits of the Health and Safety Policy.

## The Provider shall ensure that any hazardous materials or equipment used or intended to be used in the provision of the Services are kept under control and in safe keeping in accordance with all relevant Laws and Good Industry Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform the Client of all such materials being used or stored at the Premises and shall comply with any other reasonable requirement of the Client in respect of such materials and equipment.

## The Provider shall maintain a register pursuant to the Control of Substances Hazardous to Health Regulations 2002 in relation to each of the Premises and shall ensure that a copy of each register is held at the Provider's registered office and that a copy is given to the Client upon request.

# PAYMENT PROVISIONS

###### Payments

### In consideration of the Provider carrying out its obligations under the Agreement the Client shall pay to the Provider the Contract Price as set out in Schedule 2 (Pricing Schedule) in accordance with this clause 11 (Payment Provisions) and subject to the provisions of Schedule 6 (Audit Requirements).

### No later than fourteen (14) days after the end of each calendar month the Provider shall submit to the Authorised Officer an invoice in respect of the Services provided by the Provider during the previous calendar month, such invoice to be in the format as set out in the Specification and supported by such evidence as is prescribed in the Specification.

### Within thirty (30) days of the receipt of the invoice the Authorised Officer shall issue a certificate certifying the amount properly due to the Provider in accordance with the Agreement which shall take into account any adjustments made in accordance with clause 11.2 (Ascertainment of Amounts due in Certificates) and the Client shall pay to the Provider such amount as is properly certified and due within thirty (30) days following receipt of the Provider’s invoice.

### The method of payment to be used by the Client will be an electronic transfer to the Provider’s bank account.

### Where either party disputes any sum to be paid to it then payment equal to the sum not in dispute shall be paid and the Dispute as to the sum that remains unpaid shall be referred to clause 15 (Problem Solving, Dispute Avoidance and Resolution).

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

### (a) Provisions having the same effect as clauses 11.1.2 -11.1.3 of this Agreement; and

### (b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 11.1.2 – 11.1.3 of this Agreement.

###### Ascertainment of Amounts Due in Certificates

### The amount stated as being due in a certificate issued by the Authorised Officer pursuant to clause 11.1.3 shall be the Contract Price measured and calculated in accordance with Schedule 2 (Pricing Schedule) and as adjusted by the following:

#### less any previous payments made to the Provider for that part of the Services;

#### less any payment in respect of any Services which the Provider has either failed to provide or has provided not in accordance with the terms of the Agreement; and

#### less any other additions or deductions as otherwise authorised in the Agreement.

###### Taxes

### The Client shall pay to the Provider such VAT as may be chargeable by the Provider in connection with the provision of the Services. The Provider shall issue a tax invoice in respect thereof which clearly shows separately the amount of VAT chargeable.

### Any Environmental Taxes payable relating to the Services shall be paid by the appropriate party as set out in Schedule 2 (Pricing Schedule).

###### Fixed Price Contract

This contract is fixed price, for the duration of the initial term. The Authority may consider a price review in exceptional circumstances (Lot 1 only). The Authority is under no obligation to consider or accept any price variations

###### Audit

### The Provider shall install and implement such apparatus and systems as the Authorised Officer may from time to time require to ensure that the Client is charged for and pays only such amounts as they are obliged to under the terms of the Agreement.

### The Provider shall keep books of accounts in accordance with best accountancy practice with respect to the Services.

### The records referred to in this clause shall be retained for a period of at least six (6) years after the Termination Date.

### All information referred to in this clause is subject to the obligations set out in clause 7.4 (Confidentiality).

# EMPLOYEES

###### Employees

### Throughout the Term the Provider shall be responsible for ensuring that it has sufficient Staff for the proper and efficient performance of the Services and that Staff:

#### are at all times adequately supervised and are discharging their duties in accordance with the Agreement;

#### observe all Health and Safety Polices and security requirements in relation to any premises where they discharge their duties;

#### are properly attired according to the nature of their duties in identifiable uniforms and where necessary protective clothing and footwear;

#### disclose their identity to the Client or to any third party on request;

### Whilst engaged at the Premises the Provider shall (and shall procure that any Sub-Contractor shall) comply with the Client's policies relating to the conduct of staff and security arrangements. The Authorised Officer (acting reasonably) may:

#### instruct the Provider that disciplinary action is taken against any employee of the Provider or any Sub-Contractor involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts himself or is incompetent or negligent in his duties; and/or

#### where the Authorised Officer has reasonable grounds for considering that the presence or conduct of an employee at any Premises is undesirable or poses a significant risk to themselves, third parties or property, require the exclusion of the relevant employee from the Premises.

### The Provider shall, promptly upon request, provide to the Client such contact details as the Client may reasonably require in relation to the Provider's Representative and site managers (or such equivalent or alternative members of Staff of the Provider or any Sub-Contractor as reasonably required by the Client) and any other Staff working at the Premises and shall promptly update such details if and when they change.

###### Equal Opportunities and Human Rights

### The Provider is required to have in place an equal opportunities policy. Or endeavour to establish one as soon as possible after contract award or within 12 months of contract award. This policy must specify that the Provider will not treat Staff 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 because they have a disability. The policy must also specify that the Provider will not tolerate behaviour which is inconsistent with it and detail the measures it will take if this occurs.

### In the performance of the Service and in its dealings with service users, Client's Representatives and members of the general public, the Provider shall comply and shall ensure that its Staff comply with:

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

#### all Laws relating to equal opportunities, including but without limitation relating to disability discrimination, sex discrimination and race relations; and

#### the Client's equal opportunities policies and procedures as may be adopted and amended from time to time and as notified to the Provider.

####

# TERMINATION

###### Termination on Client Default

### If during the Term the Client:

#### fail to make payment of any amount (other than any amount being disputed in good faith in accordance with clause 11 & 15 (Problem Solving, Dispute Aviodance and Resolution))) of money exceeding ten per cent (10%) that is due and payable by the Client in accordance with the terms of the Agreement within forty-five (45) days of the date that the amount fell due for payment; or

#### breach any of their obligations under the Agreement which substantially frustrates or renders it impossible for the Provider to perform its obligations under the Agreement for a continuous period of two (2) months, (a **"Client Default"**), the Provider may, without prejudice to any rights or remedies already accrued, elect to terminate the Agreement in accordance with clauses 13.1.2/ 13.1.3 below.

### If a Client Default has occurred and the Provider wishes to terminate this Agreement, it must serve a termination notice on the Client within thirty (30) days of becoming aware of the Client Default specifying the nature of the Client Default and the Provider’s intention to terminate.

### The Agreement will terminate in respect of the relevant Client on the day falling forty-five (45) days after the date that Client receives the termination notice, unless the Client rectifies the Client Default within thirty (30) days of receipt of the termination notice.

###### Termination for Provider Default

### If, during the Term the Provider:

#### commits a breach of any of its obligations under the Agreement which materially and adversely affects the performance of the Services;

#### makes an assignment of the Agreement in breach of clause 14;

#### commits a Persistent Breach;

#### breaches any of its obligations under clause 8 (Insurances); or

#### fails to perform the Service for a continuous period of seven (7) days or for a total period of thirty (30) days in any twelve (12) month period during the Term; or

(each a "**Provider Default"**), then the Authorities may serve a termination notice on the Provider.

### The termination notice referred to in clause 13.2.1 must specify:

#### the type and nature of Provider Default that has occurred;

#### in the case of a Provider Default under clauses 13.2.1(a) or 13.2.1(b) (each a **"Rectifiable Provider Default"**), that all or part of the Agreement will terminate on the day falling thirty (30) days after the date the Provider receives the termination notice unless the Provider rectifies the Provider Default within fourteen (14) days of receipt of the termination notice; and

#### in the case of a Provider Default other than a Rectifiable Provider Default, that all or part of the Agreement will terminate on the day falling fourteen (14) days after the date the Provider receives the termination notice.

### The Authorities shall be entitled to extend the timeframes specified in clause 13.2.2(b) to such other times as may be reasonable.

### If the Provider:

#### rectifies the Rectifiable Provider Default within the time period specified in the termination notice the termination notice will be deemed to be revoked and the Agreement will continue;

#### fails to rectify the Rectifiable Provider Default within the time period specified in the termination notice the Agreement will terminate on the day falling thirty (30) days after the date of receipt of the termination notice.

### In the case of a Provider Default other than a Rectifiable Provider Default, the Agreement will terminate on the day falling fourteen (14) days after the date of receipt of the termination notice.

###### Termination on Provider Insolvency

### If the Provider:

#### becomes bankrupt, or makes a composition or arrangement with its creditors, or has an order in respect of its company for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986 or the Companies Act 1985;

#### has a winding up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed;

#### has a provisional liquidator, receiver or receiver manager of its business or undertaking duly appointed;

#### has an administrator or administrative receiver appointed pursuant to the Insolvency Act 1986; or

#### has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in, or subject to, the floating charge,

then in any such circumstance the Authorities may terminate the Agreement forthwith by written notice with immediate effect.

###### Termination upon Force Majeure

### If a Force Majeure Event prevents either party from performing its obligations under the Agreement for a period of four (4) consecutive months then, provided the notification requirements set out in clause 2.6 (Force Majeure) have been complied with, without prejudice to any accrued rights or remedies under the Agreement, either party may terminate the Agreement by giving thirty (30) days' notice in writing to the other party.

### If the Provider gives notice to the Authorities under clause 13.4.1 that it wishes to terminate the Agreement, then the Authorities have the option either to accept such notice or to respond in writing on or before the date falling ten (10) days after the date of its receipt stating that it requires the Agreement to continue. If the Authorities give the Provider such notice to continue, then:

#### the Authorities shall pay to the Provider the Contract Price from the day after the date on which the Agreement would have terminated under clause 13.4.1 as if the Service were being provided to the standard and in the manner as they were immediately prior to the Force Majeure Event being provided; and

#### the Agreement will not terminate until expiry of written notice (of at least thirty (30) days) from the Authorities to the Provider that it wishes the Agreement to terminate.

###### Expiry

### The Agreement shall terminate automatically on expiry of the Term unless it shall have been terminated earlier in accordance with the provisions of the Agreement. The Provider shall not be entitled to any compensation on expiry of the Term.

###### Effect of Termination or Expiry

### Neither party shall be obliged to terminate the Agreement where it has the right to terminate the Agreement.

### Termination of the Agreement in accordance with the provisions of this clause 13 shall be without prejudice to any accrued rights or remedies of the parties under the Agreement.

# CHANGE IN CONTROL, ASSIGNMENT AND SUB-CONTRACTING

###### Change of Control of Provider

### The Provider shall inform the Client immediately of any change in the ownership of the Provider.

###### Sub-Contracting

### The Provider shall not Sub-Contract the provision of the Services or any part thereof without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed).

# PROBLEM SOLVING, DISPUTE AVOIDANCE AND RESOLUTION

###### Referral to Senior Officers

### Any difference or dispute arising under the Agreement (a "**Dispute**") shall in the first instance be referred to the Authorised Officer and the Provider's Representative who shall use all reasonable endeavours to ensure they receive the views of all parties and consider all solutions proposed when attempting to resolve the Dispute.

### Where the Authorised Officer and the Provider's Representative do not achieve within twenty-eight (28) days of being notified of the Dispute a solution acceptable to all parties involved, then clause 15.2 (Mediation) and clause 15.3 (Independent Expert) shall apply.

###### Mediation

If the Dispute has not been resolved pursuant to clause 15.1 (Referral to Senior Officers) the parties shall refer the Dispute to mediation in accordance with the Centre for Dispute Resolution (“CEDR”) Model Mediation Procedure or on such conditions as may be agreed between the parties. Any mediation shall be completed within thirty (30) days of such referral and any decision arising there from shall be final and binding unless otherwise agreed by the parties.

###### Independent Expert

### If the Dispute has not been resolved pursuant to clause 15.1 or clause 15.2, either party shall be entitled to refer the Dispute to be decided by a single independent expert agreed in writing by the parties or in default of such agreement within fourteen (14) days to be appointed at the request of any party by the Relevant Professional Body pursuant to clause 15.3.3 and the decision of such independent expert shall be conclusive and binding on the parties in the absence of manifest error.

### The costs of the independent expert (including those of his or her appointment) as well as those of the parties shall be at the independent expert’s discretion having regard, without limitation, to the conduct of the parties. The independent expert shall give the parties the opportunity to make representations and counter-representations to him or her within specified time limits.

### The Relevant Professional Body shall be:

#### in the case of a Dispute under clause 11 (Payment Provisions) the Institute of Chartered Accountants in England and Wales (or any successor body);

#### in the case of a Dispute under clause 2 (the Service), , clause 5 (Premises and Assets) and any provision of the Specification the Chartered Institution of Waste Management (or any successor body); and

#### for all other Disputes the Law Society of England and Wales (or any successor body) or such other professional body as designated or recommended by it.

# emergency step-in

## If the Provider is in breach of its obligations under this Agreement and/or the Authority reasonably believes that the Provider is in breach of its duty of care under the EPA, and the Client reasonably believes that it needs to take action:

### because a serious risk exists to the health or safety of persons or property or to the environment; and/or

### to discharge a statutory duty,

then the Client shall be entitled to enter upon the Premises and take such action as notified under clause 16.2 and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**").

## If clause 16.1 applies and the Client wishes to take action, the Client shall notify the Provider in writing of the following:

### the action it intends to take;

### the reason for such action;

### the date it wishes to commence such action; and

### the time period which it believes will be necessary for such action.

## Following service of such notice, the Client shall be entitled to enter upon the Premises and take the Required Action and the Provider shall give all reasonable assistance to the Client while it is taking the Required Action.

## The Provider shall indemnify the Client on demand for and in respect of all liabilities arising out of the circumstances giving rise to the Required Action and the Client's costs of taking the Required Action.

# GENERAL

###### Successors

The provisions of the Agreement are binding on any successors in title of the parties.

###### Notices

### All notices to be given under the Agreement shall be in writing and shall either be delivered personally or sent by first class or pre-paid post or by facsimile transmission and shall be deemed duly served:

#### in the case of a notice delivered personally, at the time of delivery;

#### in the case of a notice sent by first class pre-paid post, two (2) clear working days after the date of dispatch; and

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

### Each notice shall be addressed to the address or facsimile number of the party concerned set out in the Agreement or to such other address as that party shall have previously notified to the sender.

### Except as expressly provided here in, notice may not be served by electronic mail.

###### Entire Agreement

### The Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt within it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters.

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

### Nothing in this clause 17 shall operate to exclude any liability for fraudulent misrepresentation.

###### Amendments

This Agreement may not be varied except in writing duly executed by the parties as a deed.

###### Duty to Co-operate

### The Provider shall take all reasonable steps and co-operate fully with the Authorities and any New Provider so that any continuation of the Service is achieved with the minimum of disruption.

### Upon the Termination Date and in the event that the Authorities wish to enter into another contract for the Service the Provider shall (and shall procure that its Sub-Contractors shall) subject to the Authorities complying with their obligations under the Data Protection Act 1998 and clause 7.4 (Confidentiality) comply with all reasonable requests of the Authority to provide information relating to the Provider’s costs of operating and maintaining the Services.

###### Illegality

In the event that any part of the Agreement shall be or become or be declared void, invalid, illegal or unenforceable for any reason whatsoever including by reason of the provisions of any Law, any of any decision of any Court or Regulatory Body having jurisdiction over the parties or the Agreement, the parties hereby expressly agree that the remaining parts and provisions of the Agreement shall continue in full force and effect with such amendments to ensure that the balance of obligation remains so far as possible the same as under the Agreement or as may be agreed between the parties.

###### Third Party Rights

A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

###### Set-Off

Subject to clause 13.6.3the Provider shall not be entitled to retain or set-off any amount due to the Client by it, but the Client may retain or set-off any amount owed to it by the Provider under the Agreement which has fallen due and payable by the Provider against any amount due to the Provider under the Agreement, provided that if the payment or deduction of any such amount is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with clause 15 (Problem Solving, Dispute Avoidance and Resolution).

###### Authority Standing Orders

The Provider shall comply with the requirements of the Client's standing orders for the time being in force and which are available for inspection during normal working hours by prior appointment with the Authorised Officer at the Authority’s address as stated herein.

###### Law of Agreement and Jurisdiction

The Agreement shall be governed by and construed in accordance with the laws of England and Wales and, without prejudice to clause 15 (Problem Solving, Dispute Avoidance and Resolution), each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

###### No Exclusivity

The Authorities shall be entitled to procure from third parties services similar to the Services.

##  **18** **– Definitions and Interpretation**

1. Definitions
	1. In the Agreement , unless the context requires otherwise, the following terms shall have the meanings given to them below:

|  |  |
| --- | --- |
| **“1999 Act”** | the Local Government Act 1999; |
| **"Acceptance Criteria"** | the criteria or specification of the Contract Waste that shall be accepted by the Provider as set out in clause 2.5  |
| **“Affiliate”** | in relation any company, any holding company or subsidiary of that company or any subsidiary of such holding company and “holding company” and “subsidiary” shall have the meanings given in section 736 of the Companies Act 1985; |
| **“Agreement”** | this agreement (including the Specification, the Provider's Tender and all schedules and appendices attached hereto);  |
| **“Authorised Officer”** | the representative of the Client (or any duly appointed deputy)) as the same may be replaced from time to time and notified to the Provider in accordance with clause 3;  |
| **“Authorities”** | Melton Borough & Leicestershire County Council or any of them as the context requires, and **"Authority"** shall be construed accordingly;  |
| **“Authority Change Notice”** | a notice issued by the Authorities proposing a Variation; |
| **"Cardboard"** | means any paper based product, including but not limited to packaging card and corrugated card; |
| **“Change in Law”** | the coming into effect after Commencement Date of any Law or any amendment or variation to any Law which was not reasonably foreseeable at the date of the Agreement;  |
| **“Client”** | such one or more of the Authorities as shall from time to time be notified to the Provider as the client pursuant to and in accordance with the provisions of clause 3.7.1 (and where there is more than one Client, reference to Client shall mean the relevant Client as the context so admits);  |
| **“Client Default”** | Accordance with the provisions of clause 13.1.1, 13.1.2 & 13.1.3 |
| **“Commencement Date”** | Start of the Contract in the acceptance of Green Waste at the agreed site. |
| **“Compensation Payment”** | the sum equal to: redundancy payments for employees of the Provider that have been or will be reasonably incurred by the Provider as a direct result of termination of this Agreement; and direct losses that have been or will be reasonably and properly incurred by the Provider as a direct result of the termination of this Agreement, but only to the extent that: (a) the losses are incurred in respect of the provision of the Services including:(i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such losses being incurred;(ii) any expenditure incurred in anticipation of the provision of the Services during the Term;(b) the losses are incurred under agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and(c) the Provider and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the losses, PROVIDED THAT the Compensation Payment shall not exceed an amount equal to the remainder of the Tonnage at the Termination Date multiplied by the Contract Price; |
| **“Contract Price”** | the sum per tonne of Contract Waste delivered by the relevant Client as set out in Schedule 2 (Pricing Schedule); |
| **“Contract Year”** | a period of twelve (12) calendar months from the Commencement Date (and each successive period of twelve (12) calendar months thereafter); |
| **“Contracting Authority”** | The Contacting Authority being Melton Borough Council and Leicestershire County Council  |
| **“Default”** | Accordance with the provisions of clause 13 Termination  |
| **“Dispute”** | Accordance with the provisions of clause 15 Problem Solving  |
| **“Environment”** | shall have the meaning given to it in section 1(2) of the EPA; |
| **“Environment Agency”** | the Environment Agency established pursuant to the Environment Act 1995 and its respective successors, substitutes and assigns; |
| **“Environmental Liability”** | all costs, expenses, liabilities, claims, damages, penalties or fines arising from any criminal or civil liability under any Law or any obligation under any Law to take, or to pay for, remedial action or to prevent pollution of the environment; |
| **“Environmental Tax”** | any tax or levy imposed by HM Government for the protection of the environment; |
| **“EPA”** | Environmental Protection Act 1990;  |
| **“Estimate”** | the aggregate of any estimated increased operating costs and capital costs less the aggregate of any reduced operating costs and capital costs; |
| **“Force Majeure Event”** | war, natural flood, exceptionally adverse weather conditions, strike, lockout (other than a strike or lock out which is limited to the Provider’s and/or a Sub-Contractor's personnel), civil disorder, Act of God or power cuts which could not have reasonably been foreseen or avoided and which directly causes the affected party to be unable to comply with all or a material part of its obligations under the Agreement;  |
| **"Garden Waste"** | means any organic putrescible waste arising from the garden of a private domestic dwelling, including but not limited to un-shredded grass cuttings, hedge clippings, tree prunings, weeds, dead plant material, soil bound roots, leaves, other vegetation; |
| **“Good Industry Practice”** | using standards, practices, methods and procedures conforming to Law and exercising a degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in services similar to the Provider; |
| **“Health and Safety Policy”** | the health and safety policy submitted as part of the Provider’s Tender subject to any amendments or modifications as approved by the Client;  |
| **"HWRC" or "Household Waste Recycling Centre"**  | means a place provided by the Authorities at which residents may deposit their household waste free of charge, for recycling and recovery and disposal of any residual waste; |
| **“Information Laws”** | Freedom of Information Act 2000 (FOIA) and/or the Environmental Information Regulations 2004 (EIR) and the Codes of Practice on the Discharge at Public Authorities’ Functions and Management of Records issued in accordance with Sections 45 and 46 of the FOIA and all codes of practice issued under the EIR from time to time; |
| **“Initial Term”** | The contract period of 36 months as stated in clause 1.2.2  |
| **“Intellectual Property Rights”** | all copyright, trademark or patent rights, registered and unregistered design rights, service marks and all other intellectual or industrial property rights howsoever caused; |
| **“Law”** | any applicable statute or any delegated or subordinate legislation, any enforceable community rights within the meaning of Section 2 of the European Communities Act 1972, duly applicable guidance, code of practice, direction, judgement or determination with which the Authorities and/or the Provider (as applicable) are/is bound to comply; |
| **“Necessary Consents”** | all approvals, certificates, exemptions, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service;  |
| **“New Agreement”** | an agreement to provide services to the Authorities the same as or similar to the Services in substitution for the Provider or any Sub-Contractor (in whole or part); |
| **“New Provider”** | any person contracted to provide services to the Authorities the same as or similar to the Service at any time in substitution of the Provider or any Sub-Contractor (in whole or in part);  |
| **"Parks and Garden Waste"** | means vegetation and plant matter from the Authorities parks and gardens and commercial landscaped gardens  |
| **“Parent Company Guarantee”** | a parent company guarantee substantially in the form set out in Schedule 7 (Parent Company Guarantee); |
| **“Performance Standards”** | the performance standards required to be met by the Provider as set out in clause 6 Performance and Monitoring. |
| **“Persistent Breach”** | In accordance with the provision of clause 13.2 Termination for Provider Default  |
| **“Premises”**  | all premises necessary for the provision of the Service; |
| **"Product"** | means post Treatment Contract Waste, that has been sanitised and stabilised, is high in humic substances and can be used as a soil improver, as an ingredient in growing media, or blended to produce a topsoil that will meet British Standards BS 3882, incorporating amendment Ni.1. In the case of vermicomposting these thermophilic temperatures can be foregone at the point the worms are introduced; |
| **“Prohibited Act”** **“Provider”** | (a) the offering or giving to any person any gift or consideration of any kind as an inducement or reward: (i) for doing or forbearing to do any act in relation to the obtaining or execution of the Agreement or any other contract with the Authorities save in respect of payments made to a Sub-Contractor in the normal course of the Agreement; or(ii) for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other contract with the Authorities;(b) committing any offence under the Prevention of Corruption Acts 1889 to 1916; or(c) 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;The appointed contractor providing the Green Waste Service to the Authorities; |
| **“Provider Assets”** | all equipment, containers, materials, vehicles, signage and plant necessary for the proper and efficient performance of the Service during the Term;  |
| **“Provider Default”** | In accordance with the provision of clause 13.2 Termination for Provider Default  |
| **“Provider's Representative”** | the representative of the Provider, initially listed in as the same may be replaced from time to time;  |
| **“Provider’s Tender”** | the Provider’s tender dated [**XXXXXXXXX** ] including other documents submitted by the Provider with its tender; |
| **“Rectification Notice”** | a notice issued by the Authorities in accordance with clause 13.2.1/2 Termination for Provider Default |
| **“Regulatory Body”** | the Environment Agency, the Department of the Environment, Food and Rural Affairs, the European Union Commission or other regulatory authority (other than the Authorities) including any health and safety enforcement agency, with power to regulate the Service and/or the Agreement and their respective successors and substitutes; |
| **“Relevant Professional Body”** | the relevant body to hear the dispute as set out in clause 15 Problem Solving, Dispute Avoidance and Resolution  |
| **“Relevant Transfer”** | a transfer to the Client or a New Provider of the Services or any part of the Services at any time during the Term or at the end of the Term or on the date of early termination of the Agreement; |
| **“Representatives”** | means any employee officer or authorised agent or contractor of a party;  |
| **“Required Insurances”** | In accordance with the provisions of clause 5 Insurances  |
| **"Residues"**  | means Contract Waste which has been delivered by the Client to the Premises, undergoes treatment but is not a Product and which the Provider is obliged to either send for processing at an alternative waste treatment facility for recycling or to dispose of to landfill; |
| **“Services”** | the composting services to be performed by the Provider as more particularly described in the Specification (as may be varied by any Variation made in accordance with clause 3.1 (Variations to the Service).  |
| **“Specification”** | the specification for the Services attached hereto as Schedule 4 (Specification);  |
| **“Staff”** | any employee, worker or agent of, or other person from time to time engaged or employed by the Provider or any Sub-Contractor in connection with the provision of the Service;  |
| **“Sub-Contractor”** | a person to whom the Provider sub-contracts the whole or part of the provision of the Services in accordance with clause ? (Sub-Contracting) and/or any sub-contractor of the Provider of any tier, and references to “Sub-Contract” and “Sub-Contracting” shall be construed accordingly;  |
| **“Term”** | the Initial Term and any extension made pursuant to clause 1.2.2  |
| **“Termination Date”** | the date of expiry of the Term or such earlier date of termination in accordance with the terms of the Agreement; |
| **"Treatment"** | means the controlled, biological decomposition and stabilisation of organic substrates, under conditions that are predominantly aerobic and that allow the development of thermophilic temperatures as a result of biologically produced heat resulting in the Product; |
|  |  |
| **“Value”** | In accordance with clause 11.2 |
| **“Variation”** | any variation to the Agreement (including to the Performance Standards) or the Services to be performed by the Provider; |
| **“VAT”** | value added tax or any similar or substituted tax; |
| **"Waste Management Licence Exemption"** | any Necessary Consent issued in accordance with Section 33 of the EPA or section 9 of the Pollution Prevention and Control Regulations 200 from time to time in respect of any Premises. |
| **“Waste Management Licence”**  | any Necessary Consent issued in accordance with Section 33 of the EPA or Section 9 of the Pollution Prevention and Control Regulations 2000 from time to time in respect of any Premises used in connection with the Service. |

* 1. Interpretation

In the Agreement:

* + 1. a reference to any act of parliament, or to any order, regulation, statutory instrument, or the like shall include a reference to any amendment or re-enactment of the same;
		2. words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;
		3. subject to any express provisions of the Agreement to the contrary, the obligations of either party are to be performed at that party’s own cost and expense;
		4. words importing the masculine gender include the feminine gender; words in the singular include the plural and vice versa and word importing individuals shall be treated as importing corporations and vice versa;
		5. references to "party" or "parties" shall mean the Provider and/or the Client, or the parties to this Agreement, as the context requires; and
		6. clause headings and notes are for ease of reference only and do not affect the interpretation of the Agreement.

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|  |

### **SCHEDULE 1 – INSURANCES**

* + 1. **THIRD PARTY LIABILITY (INCLUDING PRODUCTS LIABILITY)**
			1. Cover: in relation to legal liability of the Insured for all sums (including claimants' costs and expenses) whether under contract or otherwise in respect of accidental:
				1. death or bodily injury to illness or disease contracted by any person;
				2. loss of or damage to property; including but not limited to the Authorities' property; and/or
				3. interference to property or any easement, right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, loss of amenities, nuisance or any like cause,

in any such case happening or consequent upon a cause occurring during the Period of Insurance.

* + - 1. Insured parties:

### the Provider.

### Sub-Contractors of any Tier

* + - 1. Period of Insurance: from the Commencement Date for the full Term of the Agreement
			2. Minimum Limit: ten million pounds (£10,000,000) (index linked) any one occurrence/unlimited in the period.
			3. Maximum deductibles of five thousand pounds (£5,000) (index linked) each and every occurrence of property damage (personal injury claims to be paid in full).
			4. Principal extensions:
				1. Cross liabilities clause;
				2. Contractual liability clause;

1.6.3 Indemnity to Principals Clause.

* + - 1. Principal exclusions:
				1. Liability of any insured to its own Staff;
				2. Fines, penalties, punitive or exemplary damages;
				3. Liquidated damages;
				4. War, invasion, acts of foreign enemies, hostilities (whether declared or not), civil war, rebellion, revolution, insurrection of military or usurped power;
				5. Seepage, pollution or contamination unless caused by a sudden, unintended and unexpected happening;
				6. Nuclear risks; and
				7. Such other exclusions as are generally applied as a matter of current market practice in the relevant insurance market from time to time.
		1. **EMPLOYER'S LIABILITY COVER**
			1. In a form complying with current law.
			2. Minimum limit of liability - ten million pounds (£10,000,000) (index linked).

**3** **PROPERTY DAMAGE**

3.1 All Premises and Provider Assets used in connection with the provision of the Services for their full reinstatement value

**4** **OTHER INSURANCES**

 4.1 All other insurances as required by Law

SCHEDULE 2 – audit requirements

1. The Authorities shall only pay in respect of Services which the Provider proves to the satisfaction of the Authorised Officer have been carried out.
2. The Provider shall permit the Authorised Officer to have access at all times to the premises, facilities and records of the Provider, and, if so required, ensure that the Provider's officers, servants and agents give such information and other assistance to the Authorised Officer as will enable him to carry out his duties under this Schedule and to ensure that the Authorities are not charged for, and do not pay, any greater sums than it is liable to pay under the terms of the Agreement.
3. The Provider shall use weighbridges for all recycled/reclaimed materials and residual wastes and ensure that all vehicles are weighed in and out, and the computerised weight tickets issued shall be supplied to the Authorities. The Authorities will only make payments on the production of all such tickets.
4. The Authorised Officer may require the Provider to operate a system of vehicle identification to distinguish from other waste for which the Authorities are liable to pay under the Agreement.
5. Proof of Delivery
	1. The Provider shall weigh all his loaded vehicles on entry to discharge points. The same vehicles shall be weighed on departure from the site.
	2. The driver of the delivery vehicle shall be required to sign a weighbridge ticket certifying delivery of each load. The weighbridge ticket automatically generated from the weighbridge measurement will include the following information:-
		1. Serial number of the weighbridge ticket
		2. Date
		3. Time of entry and exit
		4. Vehicle registration
		5. Operator's name
		6. Type of waste
		7. Gross, tare and nett weight
		8. A Statement certifying that the material brought to the Delivery Point by the vehicle is to be disposed of/recycled/reclaimed as part of the Agreement.
	3. The Authorities will not accept any liability for payment for any deliveries when weighbridge tickets are not submitted.
	4. The Authorities will not accept liability for payment for any deliveries undertaken by unauthorised vehicles.

SCHEDULE 3 – parent company GUARANTEE

**[ ]** **LIMITED/PLC** **(1)**

and

**MELTON BOROUGH COUNCIL (2)**

**PARENT COMPANY GUARANTEE IN RESPECT OF**

**GREEN WASTE**

**THIS AGREEMENT** is made as a deed on **20**

**BETWEEN:**

1. **[ ]** (Company No.[\*\*\*\*\*]) whose registered office is situate at [ ] (the "**Guarantor**")
2. MELTON BOROUGH COUNCIL whose principle office is at

**HEREAS**

1. This guarantee is supplemental to a contract entered into on or around the date hereof (the "**Contract**") between the Provider and xxxx(together the "**Authorities**") for the performance of the Service.
2. The Guarantor has agreed to guarantee the due performance of the Contract by the Provider in the manner hereinafter appearing.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

# interpretation

## In this guarantee:

### (including the recitals) words and expressions shall have the same meanings as are respectively assigned to them in the Contract; and

### clause headings are for ease of reference only and shall not affect the construction of this guarantee.

# guarantee

## In consideration of the Authorities entering into the Contract with the Provider:

### the Guarantor irrevocably and unconditionally guarantees to the Authorities the due and punctual performance by the Provider of each and all the obligations, duties and undertakings of the Provider under and pursuant to the Contract when and if such obligations, duties and undertakings shall become due and performable by the Provider according to the terms of the Contract and the due payment and discharge of all such sums of money and liabilities due, owing or incurred or payable and unpaid by the Provider to the Authorities pursuant to the Contract or as a result of any breach thereof (including all expenses, taxes and legal fees reasonably incurred by the Authorities in connection with the Authorities justifiably and validly seeking to enforce this guarantee) as if it were sole principal obligor and not merely a guarantor; and

### as a separate, additional, continuing and primary obligation, the Guarantor agrees as a primary obligation to indemnify and hold harmless the Authorities from time to time on demand by the Authorities as a result of the non-performance or breach of any of the obligations of the Guarantor under or pursuant to this guarantee from time to time,

provided always that the liability of the Guarantor in respect of any one claim and/or in the aggregate under this guarantee shall be limited to the extent that the Provider would have been liable under the Contract.

## The Guarantor shall not be exonerated by time being given to the Provider by the Authorities or by any waiver or concession granted to the Provider by the Authorities or by any arrangement made by the Authorities with the Provider or by anything that the Authorities may do or omit or neglect to do including, but without limitation:

### the assertion or failure or delay to assert any right or remedy of the Authorities or the pursuit of any rights or remedies by the Authorities;

### the giving by the Provider of any security;

### the release, modification or exchange of any such security or the liability of any person; or

### any legal limitation, disability or incapacity of the Provider,

which but for this provision might exonerate the Guarantor.

# continuing guarantee

## The Guarantor hereby authorises the Authorities and the Provider to make any addendum or variation to the Contract the due and punctual performance of which addendum or variation shall be likewise guaranteed by the Guarantor hereunder in accordance with the terms of this guarantee and the obligations of the Guarantor under this guarantee shall in no way be affected by any such addendum or variation to the Contract.

## This guarantee is a continuing guarantee and, accordingly:

### is in addition to and not in substitution for any other security which the Authorities may at any time hold for the performance of such obligations;

### may be enforced against the Guarantor without first having recourse to any other such security and without taking any steps or proceedings against the Provider; and

### shall remain in operation until the liabilities of the Provider have been discharged in full.

## Neither the liability of the Guarantor nor the rights of the Authorities in relation to this guarantee shall be discharged or impaired by reason of the winding up, incapacity, dissolution, administration or re-organisation of the Provider or any change in its status, function, control or ownership or by any other act, event or omission (other than full performance of the Contract by the Provider) which might, but for the provisions of this agreement, operate to discharge, impair or otherwise affect any of the obligations or liabilities of the Guarantor hereunder or any of the rights, remedies or powers conferred upon the Authorities. The invalidity, illegality or unenforceability in whole or in part of any provisions of the Contract shall not affect the validity, legality and enforceability of this agreement.

## So long as any sums are payable (contingently or otherwise) under this guarantee the Guarantor shall not by paying any sum due hereunder or by any other means or on any ground claim or recover by the institution of proceedings or the threat of proceedings or otherwise such sum from the Provider or claim any set-off or counterclaim against the Provider or prove in competition with the Provider to claim or have the benefit of any security which the Authorities holds or may hold for any money or liabilities due or incurred by the Provider to the Authorities.

# sums payable

## In case the Guarantor receives any sums from the Provider in respect of any payment of the Guarantor hereunder, the Guarantor shall hold such monies in trust for the Authorities.

## All sums payable under this guarantee shall be paid in full without set-off or counterclaim and free and clear of, and without deduction of or withholding for or on account of, any taxes, duties and/or other charges.

# proceedings against the Provider

## In the event that the Authorities bring proceedings against the Provider, the Guarantor will be bound by any finding of fact, interim or final award or judgment made by an arbitrator or court in such proceedings.

# further assurances

## The Guarantor warrants that this guarantee is a legally binding obligation, enforceable in accordance with its terms and that all necessary governmental and other consents and authorisations (if any) for the giving and implementation of this agreement have been obtained.

# notices

## Any notice, request, demand or other communication to be given or made under this guarantee shall be in writing (including post, facsimile transmission or email) and shall be made to the respective facsimile number or address of the addressee set out below and marked for the attention of the persons set out below:

In the case of the Authorities:

Address:

Facsimile No.:

Email address:

Attention:

In the case of the Guarantor:

Address:

Facsimile No.:

Email address:

Attention:

## Any such notice or demand as aforesaid shall be deemed to have been served:

### if delivered personally, when left at the address referred to in clause 7.1 of this agreement if left during normal business hours of the recipient, or if delivered outside such hours on the next working day;

### if sent by first-class post within the United Kingdom, two working days after posting it;

### if sent overseas by airmail, five working days after posting it;

### if sent by telefax, on the working day following completion of its transmission; or

### if sent by email, when received in legible form.

## Where a notice is received in incomplete and/or unreadable form, the receiving party shall notify the sending party as soon as possible and in any event within two working days, failing which the notice shall be deemed to have been duly given in accordance with the provisions of this clause 7.

## For the purposes of this clause 7 "working day" means a day (other than a Saturday or a Sunday) on which banks are generally open in the recipient's country for normal business.

# general

## In proving service of a notice or demand it shall be sufficient to prove that delivery was made or that the envelope containing the notice or demand was properly addressed and posted as a pre-paid first-class or airmail letter as the case may be or that the facsimile message was properly addressed and despatched, as the case may be.

## If any provision of this agreement is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.

## This guarantee shall be governed by and construed in accordance with the laws of England and, for the benefit of the Provider, the Guarantor irrevocably submits to the jurisdiction of the English courts for the purpose of hearing and determining any dispute arising out of or in connection with this guarantee and for the purpose of enforcement of any related judgment against its assets.

## Without prejudice to any other permitted mode of service, the Guarantor agrees that service of any claim form, notice or other document for the purpose of any proceedings in such courts shall be duly served upon it if delivered or sent by registered post to [                    ] (marked for the attention of [ ]) or such other address in England or Wales as the Guarantor may notify from time to time to the Authorities.

IN WITNESS whereof this agreement has been executed by the parties as a deed on the date first above written.

Executed as a deed (but not before the )

date hereof) by )

[the GUARANTOR] by: )

Director

Director/Secretary

THE COMMON SEAL of MELTON BOROUGH COUNCIL )

was hereunto affixed in the presence of :- )

**SCHEDULE 4 – KEY PERFORMANCE INDICATORS (KPI’s)**

| **Performance Targets for KPI’s** |
| --- |
| **Contract Ref. No.** | **Description** | **Acceptable Levels (Measure)** | **Points****(Outside acceptable level)** | **Monthly Points Threshold** |
| **Green** | **Amber** | **Red** |
| 1 | Vehicle turnaround times at designated site | Max 20 mins (time per vehicle) | 1 per vehicle | 0 – 5 | 6 – 10 | 11+ |
| 2 | Rejected loads  | Zero (conforms to specification) | 1 per load | 0 | 1 | 2+ |
| 3 | The level of accidents recorded at Site | Zero (per accident) | 1 per accident | 0 | 1 | 2+ |
| 4 | Complaints by any stakeholder regarding any aspect of the service | 0 (per complaint) | 1 per complaint | 0 | 1 | 2+ |
| 5 | Performance against an agreed Method Statement | Compliant to method statement(per incident) | 1 per incident | 0 | 1 | 2+ |

Failure to achieve any of these KPIs to a ‘*red*’ level and/or in excess of three *‘amber’* may be regarded as a material breach by the Contractor and be subject to notice being given under Clause 13 of this Agreement.