
Bath & North East Somerset Council

Food Waste Treatment Services

Volume 2 - Contract

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Dated

day of

2022

PARTIES

1. Bath and North East Somerset Council of Guildhall, High Street, Bath, BA1 5AW (the Council); and
2. [Insert name of the Contractor] [Insert company registered number] of [insert address] (the Contractor)

Each referred to as a “party” and together the “parties”

BACKGROUND

- A. The Council is the waste collection and waste disposal authority for Bath and North East Somerset for the purposes of the Environmental Protection Act 1990.
- B. The Council has procured an agreement for the provision of the Services and the Contractor has sufficient knowledge and understanding of the Services and is willing and able to perform all the Services in accordance with the terms and conditions of the Contract.

OPERATIVE PROVISIONS

1. PRELIMINARY

1.1. Definitions and Interpretation

- 1.1.1. In the Contract, unless the context otherwise requires, the words and phrases shall have the meanings set out in Schedule 1 (Definitions and Interpretation).

1.2. Commencement and Duration of Contract

- 1.2.1. The Contract shall commence on the Commencement Date and unless terminated at an earlier date in accordance with the provisions herein, will continue in force during the Initial Term and for the period of any extension to the Initial Term made in accordance with clause 1.2.2.
- 1.2.2. The Council shall have the option to extend the Initial Term for one or more periods up to 28 February 2032. If the Council intends to exercise this option it must give written notice to such effect including notice of the period of extension to the Contractor no later than 3 months prior to the expiry of the Initial Term.

1.3. Bonds and Guarantees

- 1.3.1. On or prior to the Commencement Date the Contractor, if requested by the Council, shall provide at the discretion of the Council:
 - (a) the Bond with a reputable surety within the European Union in the sum of 10% of the Contract Price for the first Contract Year (indexed); or
 - (b) the Parent Company Guarantee from its parent company (as defined in Part 38, section 1173 of the Companies Act 2006).

2. THE SERVICES

2.1. Provision of the Services

- 2.1.1. The Contractor agrees in consideration of the payment of the Contract Price to provide the Services with all reasonable skill, prudence and foresight and in accordance with:
- (a) the terms of the Contract (including the Specification, the SDPs and the Performance Standards);
 - (b) the requirements of all Necessary Consents (including the Waste Management Licenses);
 - (c) all applicable Laws; and
 - (d) any reasonable instructions of the Authorised Officer acting in good faith.

2.2. Receipt of Contract Waste

- 2.2.1. The Contractor shall subject to clause 2.4 (Excluded Waste) accept all Contract Waste delivered by the Council or its Representatives to the nominated Treatment Site (s) in accordance with the Contract.
- 2.2.2. The Contractor shall ensure that access to the Treatment Site(s) is in a suitable condition to avoid causing any damage to any vehicles delivering Contract Waste for or on behalf of the Council.

2.3. Tonnages

- 2.3.1. The Contractor shall reserve during each Contract Year sufficient capacity at the Treatment Site(s) for Contract Waste.

2.4. Excluded Waste

- 2.4.1. The Contractor shall be entitled to refuse to accept at the Treatment Site(s) any Excluded Waste. If Excluded Waste is received, the Contractor shall notify the Council forthwith and comply with procedures set out in the Specification for dealing with Excluded Waste and either;
- (a) the Council or its Representative shall remove the Excluded Waste from the Treatment Site(s) at no cost to the Contractor and shall dispose of it at an alternative suitably licensed Treatment site; or
 - (b) If the Council is unable to dispose of the Excluded Waste the Contractor will deal with it in accordance with the provision of its Waste Management License and/or PPC permit and the instructions of the Environment Agency and the Council shall reimburse the Contractor in respect of all reasonable costs incurred by the Contractor in doing so.
- 2.4.2. Any Dispute regarding whether or not a load of Contract Waste contained Excluded Waste shall be dealt with in accordance with clause 17 (Problem Solving, Dispute Avoidance and Resolution).

2.5. The Treatment Site(s)

- 2.5.1. The Contractor shall in relation to the Treatment Site(s):
- (a) Obtain and maintain any Necessary Consents for the purpose of performing the Services;
 - (b) Keep it open to receive Contract Waste during the Working Hours;
 - (c) Be responsible for payment of all fees, charges, rates and all other outgoings or expenses (including, but not limited to, all Environmental Liability);
 - (d) Operate, keep in repair and maintain in accordance with Good Industry Practice; and

- (e) Ensure the Contractor Premises are insured in accordance with clause 10 (Insurance).

2.6. **Use of Alternative Treatment Site(s)**

2.6.1. During the Term if the Contractor is unable to provide the Services at the Treatment Site(s) during Working Hours it shall;

- (a) Notify the Authorised Officer forthwith;
- (b) Receive Contract Waste or use best endeavors to redirect vehicles to an alternative Treatment site(s) of closer proximity.

2.6.2. Except for when the redirection to the alternative Treatment site(s) under clause 2.6.1 above is due to a Force Majeure Event, the Contractor shall indemnify the Council for all additional operational and administrative costs and expenses incurred by the Council as a result of Contract Waste being delivered to the alternative Treatment site(s).

2.6.3. Where Contract Waste is redirected to the alternative Treatment site(s) in accordance with clause 2.6.1, then the obligations on the Contractor under the Contract to provide this Service shall apply to that alternative Treatment site(s).

2.6.4. The Contractor will be required to use best endeavors to ensure the Performance Standards at the alternative Treatment site(s) is not adversely impacted against the levels set out in the Contractor's Service delivery Plan.

2.6.5. The contractor will use best endeavors to ensure that the Treatment Site(s) is/are reopened as soon as reasonably practicable to receive Contract Waste in accordance with the terms of the Contract.

2.7. **Weighbridge**

2.7.1. The Contractor must provide and maintain an accurate weighbridge which complies fully with all Laws at the Treatment Site(s) and shall observe and adhere to the procedures pertaining to the weighing and logging of Contract Waste as set out in the Specification.

2.8. **Site Rules**

2.8.1. While on the Treatment Site(s), the Council and its Representative shall use all reasonable endeavors to comply with the Site Rules.

2.8.2. The Contractor shall be entitled to amend the Site Rules from time to time in order to comply with any Law or all safety requirements or requests of the Environment Agency and must notify the Council forthwith in writing in the event of any such amendment.

2.9. **Risk, Title and Liability in Contract Waste**

2.9.1. Risk title and liability for Contract Waste shall be deemed to transfer to the Contractor when delivered to the Treatment Site(s).

2.9.2. The Contractor shall not have title to Excluded Waste transferred to it but liability and risk will be with the Contractor until the Excluded Waste is removed from the Treatment Site(s).

2.9.3. Where the Contractor discovers any jewellery or other items of value in Contract Waste which can be reasonably assumed were unintentionally discarded or inadvertently placed into the Contract Waste, such items shall not transfer to the Contractor, and the Contractor shall notify the Authorised Officer who shall

arrange for its collection.

3. VARIATIONS

3.1. Council Variations

- 3.1.1. Subject to clause 3.1.2 the Council shall be entitled to propose a Variation in accordance with the procedures set out in Schedule 7 (Variation Procedure).
- 3.1.2. The Council shall not propose a Variation which infringes any Law.

3.2. Contractor Variations

- 3.2.1. Where the Contractor wishes to introduce a Variation, it must comply with the procedures set out in Schedule 7 (Variation Procedure).
- 3.2.2. Unless the Council's 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 Contractor.
- 3.2.3. The Council shall not reject a Variation proposed by the Contractor, which is required in order to conform to a Change in Law.
- 3.2.4. Notwithstanding clause 3.2.3 above, in the event that the Variation proposed by the Contractor in order to conform with a Change in Law materially affects the risks and/or costs to which the Council is exposed and the Variation is deemed by the Council to be unaffordable the Council shall be entitled to elect to terminate the Contract by giving 30 days written notice. If the Council terminates the Contract in accordance with this clause then the provisions of clause 15.7.1 (Consequences of Termination) shall apply as if the Council has terminated the Contract in accordance with clause 15.7.2 (Termination upon Force Majeure Event).

3.3. Valuation and Payment

- 3.3.1. If the Variation proposed by the Contractor causes or will cause the Contractor's costs or those of a Sub-Contractor to decrease there shall be a decrease in the Contract Price payable by the Council by an amount equal to 100% of the decrease.
- 3.3.2. The value of the Estimate submitted by the Contractor in accordance with Schedule 7 (Variation Procedure) shall be calculated in accordance with either:
 - (a) Schedule 2 (Price Schedule) where the Variation is of a similar character to the Services currently being performed; or
 - (b) at fair rates and prices where the Variation is not of a similar character to the Services currently being performed,so that the Contractor is in no worse or better position.
- 3.3.3. 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.

3.4. Amendments to Documentation

- 3.4.1. 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.

4. FORCE MAJEURE

- 4.1.1. If either party is delayed or hindered in or prevented from performing any of its obligations under the Contract by a Force Majeure Event then, so long as that Force Majeure Event continues, that party shall be excused from performance of such obligation to the extent that party is so delayed, hindered or prevented.
- 4.1.2. 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.
- 4.1.3. As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.
- 4.1.4. 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 Contract. Following such notification the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 4.1.5. Neither party shall be deemed to be in breach of the Contract, or otherwise be liable to the other, 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.
- 4.1.6. For so long as the Contractor's obligations are suspended as a result of a Force Majeure Event:
 - (a) the Council's corresponding payment obligations shall be reduced to reflect any actual savings in cost made by the Contractor as a consequence of non-performance or any reduced performance of the Services by the Contractor; and
 - (b) the Council shall be entitled to make alternative arrangements for the provision of the Services or part thereof.

5. ADMINISTRATION

5.1. Officers

- 5.1.1. The Authorised Officer shall liaise with and give instructions to the Contractor and its Representatives in relation to all matters concerning the performance by the Contractor of its obligations under the Contract and to determine any matters or issue any notices as may be the function of the Authorised Officer under the Contract.
- 5.1.2. 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 Contractor.
- 5.1.3. The Contractor's Manager shall have the power on behalf of the Contractor in connection with any matter relating to the performance of the Services and shall exercise the rights, functions and obligations of the Contractor under the Contract.
- 5.1.4. To the extent it is reasonably possible the Contractor shall not change the identity of the Contractor's Manager without first discussing the matter with the Council and having reasonable regard to the views of the Council in relation to any proposed replacement.

5.1.5. The Contractor's Manager shall attend a monthly meeting with the Authorised Officer and any additional meetings required by the Authorised Officer (at times and at the locations as specified by the Authorised Officer) to review the provision of the Services, the achievement or not by the Contractor of the Performance Standards and any other issues relating to the operation of the Service.

5.2. Good Faith

5.2.1. The parties shall and shall procure that their Representatives shall at all times act reasonably and in good faith in relation to the Contract and the performance of the Services.

5.3. Assistance in Legal Proceedings

5.3.1. If requested to do so by the Authorised Officer, the Contractor shall give all reasonable assistance and co-operation and provide to the Council any relevant information which is not confidential in connection with any legal inquiry, arbitration or court proceedings in which the Council may become 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 or the Contractor's presence on any premises owned or occupied by the Council.

5.3.2. 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 Authorised Officer in writing as soon as practicable and in any event within 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.

5.3.3. Such information provided or assistance rendered pursuant to in clauses 5.3.1 and 5.3.2 above, in whatever form, shall be at no cost to the Council unless otherwise ordered or determined in any decision or other outcome of any inquiry, arbitration, court proceedings or enquiry by the Local Government Ombudsman.

6. WARRANTIES & ACKNOWLEDGEMENTS

6.1. Council Liability to be Excluded

6.1.1. The Council represents that it has used reasonable endeavours to ensure that the information provided by the Council comprises all such information of which the Council is aware and which the Council in its reasonable opinion regards as relevant or material to the Services.

6.1.2. The Contractor acknowledges, subject to clauses 6.1.1 and 6.1.3 (inclusive) that the Council and its Representatives shall not be liable to the Contractor 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 Contract or not).

6.1.3. Clause 6.1.2 shall not apply to any statement, representation or warranty made fraudulently or to any provision of the Contract which was induced by fraud, for which the remedies available shall be all those available under Law.

6.2. Contractor Warranties

6.2.1. The Contractor warrants and represents to the Council that:

(a) the Contractor has the full capacity and authority to enter into and to

perform each of its obligations under the Contract;

- (i) the Contract is executed by duly authorised representatives of the Contractor;
- (ii) that the information supplied in the Contractor's Tender is true and accurate;
- (iii) 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
- (iv) in entering into the Contract it has not committed any Prohibited Act.

6.3. **Acknowledgement**

6.3.1. The Contractor shall be deemed to have:

- (a) gathered all information necessary to perform its obligations under the Contract; and
- (b) satisfied itself as to the nature and extent of the risks assumed by it under the Contract and the accuracy of the rates and prices it has stated in Schedule 2 (Price Schedule).

7. **CONTRACTOR PREMISES AND ASSETS**

7.1. **Contractor Premises**

7.1.1. The Contractor shall be responsible for providing all Contractor Premises.

7.1.2. The Contractor shall:

- (a) obtain and maintain any Necessary Consents to use the Contractor Premises for the purpose of the Services;
- (b) ensure that the Contractor Premises are available for the Term;
- (c) be responsible for the payment of all fees, charges, rates and all other outgoings or expenses (including, but not limited to, all Environmental Liability) in relation to the Contractor Premises;
- (d) operate, keep in repair and maintain the Contractor Premises in accordance with all Laws and Good Industry Practice; and
- (e) insure the Contractor Premises in accordance with clause 10 (Insurance).

7.2. **Contractor Assets**

7.2.1. The Contractor shall be responsible at its own cost for providing all Contractor Assets.

7.2.2. All Contractor Assets used for the purpose of supplying the Services must be either owned by the Contractor or hired by the Contractor 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.

7.3. Obligations for Contractor Assets

7.3.1. Throughout the Term the Contractor shall:

- (a) provide on an annual basis to the Council a list of Assets;
- (b) operate and keep in repair and maintain the Assets in accordance with Good Industry Practice and any manufacturer's recommendations;
- (c) insure the Assets in accordance with clause 10 (Insurance); and
- (d) provide replacements when breakdowns occur or an Asset ceases to work effectively.

7.4. Transfer of Assets

7.4.1. Not less than 6 months prior to expiry of the Term or in the case of early termination as soon as practicable, the Council shall issue a notice in writing to the Contractor indicating which, if any, of the Assets the Council requires to be transferred to it or any New Contractor for the purpose of continuing the provision of the Services or services the same as or similar to the Services ("a Transferring Assets Notice").

7.4.2. As soon as practicable (but in any event within 30 days) after the Contractor receives the Transferring Assets Notice the Contractor shall identify in writing the Transferring Assets and the value of such Transferring Assets, which shall be the current market value (exclusive of VAT) fixed by a valuer approved by both parties acting as expert and not as arbitrator ("the Value").

7.4.3. As soon as practicable after the Value of the Transferring Assets has been determined pursuant to clause 7.4.2, the Council shall confirm in writing which Transferring Assets are to transfer to it and subject to payment of the Value by the Council, the Contractor shall transfer such Transferring Assets to the Council or any New Contractor (as determined by the Council) on the Delivery Date, at such place as the Council shall specify.

7.4.4. Risk in the Transferring Assets shall pass to the Council or the New Contractor (as appropriate) upon delivery and title to such Transferring Assets shall pass to the Council or the New Contractor (as appropriate) on payment of the Value for the same.

7.5. Rights of Access

7.5.1. The Contractor shall at all times during the Term allow the Council and its Representatives access on reasonable notice during Working Hours (save in the case of emergency where no notice shall be required) to the Contractor Premises for the purpose of:

- (a) inspecting the operation of the Services and to monitor compliance by the Contractor with its obligations under the Contract; and
- (b) inspecting all Assets and systems and procedures used by the Contractor to provide the Services.

8. PERFORMANCE AND MONITORING

8.1. Service Delivery Plans

8.1.1. The Contractor shall ensure that all aspects of the Services are carried out in

accordance with the Service Delivery Plans.

8.2. Performance Standards

- 8.2.1. The Contractor shall throughout the Term meet the Performance Standards.
- 8.2.2. The parties shall meet at least every 12 months to review the Services provided, the Performance Standards, the terms of the Contract and any other matters with a view to deciding whether any improvements can be made and implemented during the Term, and where any Variation is required as a result thereof, the Variation shall be dealt with in accordance with Schedule 7 (Variation Procedure).

8.3. Review and Monitoring of Performance

- 8.3.1. The Authorised Officer may investigate each case where the Contractor may have or appears to have failed, for whatever reason, to perform the Services in whole or in part in accordance with the provisions of the Contract (“a Default”).
- 8.3.2. Where the Authorised Officer is satisfied that in any particular case the Contractor is in Default it shall be entitled to instruct the Contractor to remedy the Default at its cost within such reasonable period as the Authorised Officer may determine by issuing a Remediation Notice, unless the Default in the reasonable opinion of the Authorised Officer falls within clause 8.4 (Irremediable Default).
- 8.3.3. If the Contractor fails to comply with any Remediation Notice issued by the Authorised Officer, the Authorised Officer shall be entitled to issue a Default Notice to the Contractor specifying in general terms:
 - (a) the nature of the Default; and
 - (b) instructions to the Contractor to remedy the Default at its cost within such reasonable period as the Authorised Officer may determine.
- 8.3.4. The administrative costs together with the cost of re-inspection incurred by the Council in respect of each Default Notice issued shall be £70 (indexed) and such sums shall be deducted from the Contractor’s monthly statement in accordance with clause 13.2 (Ascertainments of Amounts Due in Certificates). The parties agree the amounts of the deductions stated in this clause constitute liquidated damages for administration and re-inspection and are not a penalty.
- 8.3.5. If the Contractor fails to remedy any Default which is the subject of a Default Notice in accordance with the time limits set out therein, a further Default Notice shall be issued every 24 hours until the Authorised Officer is satisfied that the Default has been remedied and the Council shall be entitled to:
 - (a) withhold payment for those services not performed satisfactorily in accordance with this clause 8.3;
 - (b) engage another contractor to carry out the Services which are the subject of the Default Notice and recover from the Contractor all costs and expenses associated therewith, including any administration costs;
 - (c) exercise the Council’s right to step in under clause 18 (Council’s Step In); and
 - (d) invoke the termination provisions under clause 15.1 (Termination on Contractor Default) where the failure amounts to a Persistent Breach.
- 8.3.6. The Authorised Officer shall endeavour to issue all Default Notices in writing but in the event that this is not practicable it may do so verbally (whether in person or by telephone) and shall confirm the issue of such Default Notice in writing as soon as

reasonably practicable thereafter. The response times for the Default Notices shall begin at the time of the transmission of the relevant notice either verbally or in writing by the Authorised Officer.

8.4. **Irremediable Default**

- 8.4.1. The Authorised Officer may issue a Default Notice to the Provider where a Default may have or appears to have occurred that is not capable of being remedied (“**an Irremediable Default**”).
- 8.4.2. Where the Authorised Officer is satisfied that in any particular case the Contractor is in Irremediable Default he shall be entitled to issue an Irremediable Default Notice to the Contractor specifying:
- (a) The nature of the Irremediable Default; and
 - (b) Request written acknowledgement from the Contractor within 24 hours of the date of the Irremediable Default Notice that an Irremediable Default exists.
- 8.4.3. On expiry of the 24 hour notice period within the Irremediable Default Notice the Council shall be entitled to invoke the termination provisions under clause 15.1 (Contractor Default).
- 8.4.4. The administrative costs incurred by the Council in respect of each Irremediable Default Notice issued shall be £70.00 (Indexed) and such sums shall be deducted from the Contractor's monthly statements in accordance with clause 13.2 (Ascertainment of Amounts Due in Certificates). The parties agree the amount of the deduction stated in this clause shall constitute liquidated damages for administration and are not a penalty.
- 8.4.5. The Authorised Officer shall endeavour to issue all Irremediable Default Notices in writing but in the event that it is not practicable it may do so verbally (whether in person or by telephone) and shall confirm the issue of the Irremediable Default Notices in writing via the post or on email, as soon as reasonably practicable. The response times for the Irremediable Default Notices shall begin at the time of the transmission of the relevant notice either verbally, on email or in writing the Authorised Officer.

8.5. **Contractor Direct Monitoring**

- 8.5.1. Where the Contractor is unable to perform the Services or any part of it at any time, the Contractor 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 shall not in any way release or excuse the Contractor from any of its obligations under the Contract.
- 8.5.2. The Contractor's Manager shall be available to attend any inspection or meeting at agreed times if so requested by the Authorised Officer. The Contractor's Manager shall be required to provide sufficient management information in such detail as to satisfy the Authorised Officer of its working arrangements.
- 8.5.3. The Contractor 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.
- 8.5.4. 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 standards is being made and that problems or potential problems are identified and corrected at as early a stage as possible.

- 8.5.5. Without prejudice to any other rights and remedies available to the Council, the Contractor shall take all 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 Contract, including but not limited to the Council's right to step in under clause 18 (Council Step In);
- 8.5.6. The Contractor shall develop a quality system for managing any complaint it receives relating to the Services in accordance with the terms of the Specification.

9. INFORMATION AND REPORTING

9.1. Contractor's Records

- 9.1.1. Throughout the Term the Contractor shall supply to the Authorised Officer such information relating to the Services as is set out in the Specification at the times and frequencies set out therein.
- 9.1.2. The Contractor shall keep and maintain written records of the procedures adopted by it in order to provide the Services and shall make the same available to the Council upon reasonable request.
- 9.1.3. The Contractor shall supply the Council with such assistance, data and information as the Council may reasonably require so far as the same is necessary to enable it to comply with the Best Value Accounting Code of Practice issued by Chartered Institute of Public Finance and Accountancy and any other statutory information requirements.

9.2. Data Protection

- 9.2.1. The Contractor and its Representatives warrant they shall comply in all respects with the provisions of the Data Protection Act 1998 and both parties shall duly observe their obligations under the Data Protection Act 1998, which arise under the Contract.
- 9.2.2. Where either party processes personal data ("the **Data Processor**") on behalf of the other party ("the **Data Controller**") it shall:
- (a) act only on instructions from the Data Controller in processing the personal data; and
 - (b) take appropriate technical and organisational measures against authorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 9.2.3. The Data Controller may from time to time serve on the Data Processor an information notice requiring the Data Processor, within such time and in such form as is specified in the information notice, to furnish to the Data Controller such information as the Data Controller may reasonably require relating to:
- (a) Compliance by the Data Processor or by its subcontractors with the Data Controller's obligations under the Contract in connection with the processing of personal data; and
 - (b) The rights of data subjects including but not limited to subject access rights.

9.3. Statutory and Regulatory

- 9.3.1. The Contractor shall promptly notify the Council of any notice, order or instruction issued or served on it by a Regulatory Body relating to the Services or the Contract and shall immediately notify the Council of any application to a

Regulatory Body for any variation to any Necessary Consents or any change requested by a Regulatory Body to any Necessary Consent. The Contractor will not make any application of its own volition that, if granted, will mean that any aspect of the Service cannot then be provided.

9.4. **Intellectual Property**

9.4.1. The Contractor shall not in connection with the performance of the Services use, manufacture, supply or deliver any process, article, matter or thing which would be an infringement of any Intellectual Property Rights.

9.5. **Confidentiality**

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

9.5.2. Clause 9.5.1, shall not apply to:

- (a) any disclosure of information that is reasonably required by persons engaged in the performance of its obligations under the Contract;
- (b) any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause 9.5;
- (c) any disclosure which is required by Law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or Regulatory Body having the force of Law;
- (d) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (e) any disclosure by the Council of any document related to the Contract to which it is a party and which the Contractor (acting reasonably) has agreed with the Council contains no commercially sensitive information; or
- (f) any examination pursuant to section 6(1) of the National Audit Act 1983.

9.5.3. Where disclosure is permitted under paragraph 9.5.2 the recipient of the information shall be made aware of the confidential nature of the information and shall be subject to appropriate obligations of confidentiality.

9.5.4. The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Council in connection with the Contract otherwise than for the purpose of providing the Services, except with the prior written consent of the Council.

9.5.5. Upon the Termination Date the Contractor shall upon request by the Council ensure that all documents or computer records in its possession, custody or control, which contain personal information, including any documents in the possession, custody or control of a Sub-Contractor, are either delivered up to the Council or destroyed as directed.

9.5.6. The parties acknowledge that the National Audit Office has the right to publish details of the Contract (including commercially sensitive information) in its relevant reports to Parliament.

9.6. **Publicity**

- 9.6.1. The Contractor shall not make any press announcements or publicise the Contract or its contents in any way without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.
- 9.6.2. The Contractor shall from time to time at the request of the Authorised Officer provide all reasonable assistance and support to the Council in relation to any educational or promotional activities that are carried out by the Council in relation to the Services, such assistance to be provided to the Council free of charge.

9.7. Information Laws

- 9.7.1. Notwithstanding clause 9.5 (Confidentiality) the Contractor acknowledges that the Council is subject to obligations under the Information Laws and shall in all respects and at no additional cost to the Council co-operate with the Council's requests to assist it in complying with the Council's disclosure obligations under the Information Laws.
- 9.7.2. The Contractor agrees that:
- (a) without prejudice to the generality of clause 9.5 (Confidentiality), the provisions of clause 9.5 are subject to the Council's obligations and commitment under the Information Laws;
 - (b) subject to clause 9.7.3 the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Council; and
 - (c) where the Council is managing a request for information made pursuant to the Information Laws the Contractor shall co-operate with the Council and shall respond within 5 Business Days of any request by the Council for assistance in determining how to respond to a request for disclosure.
- 9.7.3. The Council will consult with the Contractor in writing in relation to any request for disclosure of the information set out in Schedule 6 (Contractor Confidential Information) in accordance with the Information Laws.
- 9.7.4. The Contractor shall immediately notify the Council of any request made to it pursuant to the Information Laws relating to the Service and the Council shall be the party responsible for responding to the enquiry.

10. INSURANCES

10.1. Insurance Requirements

- 10.1.1. The Contractor shall at its own cost take out and maintain the Required Insurances with reputable insurers of good standing within the European Union. The Required Insurances must remain in place for the Term and be effective in each case not later than the Commencement Date.
- 10.1.2. If the Contractor is in breach of clause 10.1.1 above, the Council may pay any premiums required to keep the Required Insurances in force or itself procure such insurances and may in either case recover such amounts from the Contractor together with an administration charge of 5% of the cost of the premium either by way of deductions from amounts payable by the Council to the Contractor under the Contract or by recovering the same as a debt due to the Council from the Contractor.
- 10.1.3. Upon reasonable written notice from the Authorised Officer the Contractor shall furnish to the Authorised Officer, as and when reasonably required copies of current policies or certificates of brokers or other evidence which shows to the reasonable satisfaction of the Authorised Officer that the requirements of clause

10.1.1 are being met.

10.1.4. No party to the Contract shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would, or is likely to entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

10.1.5. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 11 (Indemnities and Limitations on Liability).

11. INDEMNITIES AND LIMITATIONS ON LIABILITY

11.1. Indemnities

11.1.1. The Contractor shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of contract or breach of Law arising out of or in connection with any act or omission of the Contractor or its Representatives under the Contract.

11.2. Limitation on Liability

11.2.1. An indemnity by either party under any provision of the Contract shall be without limitation to any indemnity by that party under any other provision of the Contract.

11.2.2. The Contractor shall not be obliged to indemnify the Council:

(a) if and to the extent the claim arises as a result of the Contractor acting on the express instructions of the Council (which shall not include anything contained in the Contract) in its capacity as a counterparty to the Contract; and

(b) to the extent that the claim is caused by the negligence or wilful misconduct of the Council or a breach of the Contract.

11.2.3. The aggregate liability of the Contractor whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract shall except under clause 11.2.7 where its liability shall be unlimited in no event exceed ten million pounds (£10,000,000) (Indexed).

11.2.4. Notwithstanding any other provision of the Contract, the Council shall not be liable to the extent permitted by Law in connection with the Contract and/or any documents entered into pursuant to or in connection with the Contract for any indirect, special or consequential loss or damage which includes, but is not limited to, any loss of profit, revenue, anticipated savings, use, contract, goodwill or business opportunities (whether direct or indirect).

11.2.5. The aggregate liability of the Council whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract shall except under clause 11.2.7 where its liability shall be unlimited in no event exceed one million pounds (£1,000,000) (Indexed).

11.2.6. 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 the other party pursuant to the Contract.

11.2.7. Notwithstanding any other provision of the Contract neither party limits or excludes

its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) loss of or damage to property; or
- (c) death or personal injury caused by its negligence.

12. HEALTH AND SAFETY

12.1. Health and Safety Management

12.1.1. The Contractor shall ensure that all health and safety matters concerning the Contract are dealt with in accordance with:

- (a) the Health and Safety Policy; and
- (b) the Health and Safety at Work etc Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons.

12.1.2. The Contractor shall:

- (a) 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 Council's Representatives and the Contractor's Staff; and
- (b) accept full responsibility for the day-to-day operational aspects of health and safety while performing the Services; and
- (c) inform the Council immediately of any breaches in health and safety law and regulation; and
- (d) co-operate fully with the Council in its monitoring of health and safety standards; and
- (e) inform the Council immediately of any health and safety issues relating to the Council's health and safety responsibilities,

pertaining to the Contract.

12.1.3. The Council and the Contractor shall throughout the Term conduct regular monitoring, reviews and audits of the Health and Safety Policy and the arrangements in place for complying with the policy.

13. PAYMENT PROVISIONS

13.1. Payments

13.1.1. In consideration of the Contractor carrying out its obligations under the Contract the Council shall pay to the Contractor the Contract Price as set out in Schedule 2 (Price Schedule) in accordance with this clause 13 (Payment Provisions).

13.1.2. At the end of each calendar month, the Contractor shall submit to the Authorised Officer an account in respect of the work forming part of the Services which has been completed by the Contractor during the previous calendar month in a format agreed between the parties.

13.1.3. Within 30 days of the receipt of the account the Authorised Officer the Council shall pay to the Contractor in cleared funds such amount as is properly certified and due, or issue a notification of adjustments required in accordance with clause 13.2 (Ascertainment of Amounts due in Certificate) and

- 13.1.4. Where the Contractor enters into a Sub-Contract with a supplier or contractor for the purposes of performing the Contract, it shall cause a term to be included in such a Sub-Contract which requires payment to be made of undisputed sums by the Contractor to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.

13.2. Ascertainment of Amounts Due In Certificate

- 13.2.1. The amount stated as being due in a certificate issued by the Authorised Officer pursuant to clause 13.1.3 shall be the value of work forming part of the Services which has been provided by the Contractor, completed to the satisfaction of the Authorised Officer, measured and valued in accordance with Schedule 2 (Price Schedule) and as adjusted by the following:

- (a) Less any previous payments made to the Contractor to that part of the Services;
- (b) Less any deductions ascertained in accordance with 8.3 (Review and Monitoring of Performance);
- (c) Less any payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately; and
- (d) Any other additions or deductions as otherwise authorised in the Contract.

13.3. Disputed Invoices

- 13.3.1. Where either party disputes any sum to be paid to or by it then a 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 17 (Problem Solving, Dispute Avoidance and Resolution).

13.4. Interest on Late Payments

- 13.4.1. Each party shall be entitled to charge the other and the other party shall pay interest on any overdue payments (which are not disputed) accruing from day to day at the Specified Rate.

13.5. Taxes

- 13.5.1. The Council shall pay to the Contractor such VAT as may be chargeable by the Contractor in connection with the provision of the Services and the Contractor shall issue a tax invoice in respect thereof which clearly shows separately the amount of VAT chargeable.

13.6. Indexation

- 13.6.1. The Contract Price contained in Schedule 2 (Price Schedule) and any other amounts expressed in the Contract to be Indexed in accordance with the formula set out in Schedule 2 (Price Schedule) shall be reviewed on the Review Date and shall be increased or reduced by a percentage equivalent to the percentage increase or reduction (if any) shown by the Index since the last Review Date and such increase or reduction shall take effect in respect of the start of the next Financial Year. The level of Indexation will be capped at 2%.

- 13.6.2. For the avoidance of doubt, the first Indexation of the Contract Prices will apply from 1 April 2023 and annually thereafter.

13.7. Audit

- 13.7.1. The Contractor shall install and implement such apparatus and systems as the Authorised Officer may from time to time require to ensure that the Council is charged for and pays only such amounts as it is obliged to under the terms of the Contract.
- 13.7.2. The Contractor shall permit records referred to in this clause 13.7 to be examined and copied by the Council and the Council's auditor and their Representatives.
- 13.7.3. The records referred to in this clause shall be retained for a period of at least 6 years after the Termination Date.
- 13.7.4. All information referred to in this clause is subject to the obligations set out in clause 9.5 (Confidentiality) and clause 9.7 (Information Laws).

14. STAFF

14.1. Staff

- 14.1.1. Throughout the Term the Contractor shall be responsible for ensuring that it will employ or engage at its own expense a sufficient number of Staff for the proper and efficient performance of the Services and that Staff:
 - (a) are at all times adequately supervised and are discharging their duties in accordance with the Contract;
 - (b) where agreed to be provided as part of the Service Delivery Plans, will not be assigned to work on the Services except where agreed as part of the Service Delivery Plans ;
 - (c) observe the Health and Safety Policy and all security requirements in relation to any Premises where they discharge their duties;
 - (d) are properly attired according to the nature of their duties in identifiable uniforms and where necessary protective clothing and footwear;
 - (e) keep upon them at all times while performing the Services appropriate identification and disclose their identity to the Council or to any third party on request;
 - (f) do not solicit or act in such a manner as to induce payment for performance of the Services; and
 - (g) are informed of all aspects of the Contract which are directly applicable to them.

14.2. Equal Opportunities and Human Rights

- 14.2.1. The Contractor is required to have in place an equal opportunities policy. This policy must specify that the Contractor will not treat Staff less favourably on the grounds of their colour, age, race, ethnic or national origin, nationality (including citizenship), marital, civil partner, or parental status, sex, sexual orientation, gender reassignment, religion or belief, trade union membership, fixed-term employee or part-time worker status, or because they have a disability. The policy must also specify that the Contractor will not tolerate behaviour which is inconsistent with it and detail the measures it will take if this occurs. The Contractor shall further procure that any Sub-Contractor shall also comply with this obligation.
- 14.2.2. In the performance of the Services and in its dealings with service users, Council Representatives and members of the general public, the Contractor shall comply and shall ensure that Staff comply with:

- (a) the Human Rights Act 1998 as if the Contractor were a public body (as defined in the Human Rights Act 1998);
- (b) all Laws relating to equal opportunities, including but without limitation relating to age discrimination, disability discrimination, sex discrimination and race relations; and
- (c) the Council's equality or equal opportunities policies and procedures as may be adopted and amended from time to time and as notified to the Contractor.

14.2.3. The Council and the Contractor will together review their respective equal opportunities policies to resolve any conflicts between them.

14.3. **Contractor's Obligations**

The Contractor shall be responsible for all emoluments and other benefits in respect of its Staff and shall procure that any Sub-Contractor shall be responsible for the same in respect of its Staff including, without limitation, all wages, holiday pay, bonuses, commissions, PAYE, national insurance and social security contributions, pension contributions and any other liability, deduction, contribution, assessment, claim or otherwise.

14.4 **TUPE**

14.4.1 The parties shall comply with the provisions of Schedule 14.

14.4.2 The Contractor will comply with the Best Value Authorities Staff Transfers (Pensions) Direction 2007 ("the Direction"). Without limitation the Contractor will allow the Employees to remain in the Local Government Pension Scheme and will pay the requisite pension contributions or (if permitted by the Direction) provide broadly comparable benefits to Employees provided they have been certified by the Government Actuary's Department and/or (if the Council so elects) by the Council.

15. **TERMINATION**

15.1. **Termination for Contractor Default**

15.1.1. If, during the Term the Contractor:

- (a) commits a breach of any of its obligations under the Contract which materially and adversely affects the performance of the Services;
- (b) commits an Irremediable Default; or
- (c) makes an assignment of the Contract in breach of clause 16.2 (Contractor Assignment and Novation);
- (d) commits a Persistent Breach;
- (e) save for where a Force Majeure Event occurs, breaches any of its obligations under clause 10 (Insurances); or
- (f) fails to perform the Service for a continuous period of 7 days or for a total period of 30 days in any 12 month period during the Term,

(each a "**Contractor Default**"), then without prejudice to any accrued or remedies, the Council may serve a termination notice on the Contractor.

15.1.2. The termination notice referred to in clause 15.1.1 must specify:

- (a) the type and nature of Contractor Default that has occurred; and
- (b) where a Contractor Default has occurred, which, in the opinion of the Council, acting reasonably, cannot be rectified, the Council shall be entitled to terminate the Contract by written notice to the Contractor with immediate effect; or
- (c) where a Contractor Default has occurred which, in the opinion of the Council, acting reasonably, can be rectified, the Council shall be entitled to terminate the Contract on the day falling 30 days after the date the Contractor receives the termination notice unless the Contractor rectifies the Contractor Default within 14 days of receipt of the termination notice.

15.1.3. The Council shall be entitled to extend the timeframes specified in clause 15.1.2(b) to such other times as may be reasonable.

15.1.4. If the Contractor:

- (a) rectifies the Contractor Default within the time period specified in the termination notice, the termination notice will be deemed to be revoked and the Contract will continue;
- (b) fails to rectify the Contractor Default within the time period specified in the termination notice the Contract will terminate on the day falling 30 days after the date of receipt of the termination notice.

15.2. Termination on Contractor Insolvency

15.2.1. If the Contractor:

- (a) 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;
- (b) has a winding up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed;
- (c) has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- (d) has an administrative receiver, as defined in the Insolvency Act 1986, appointed; or
- (e) 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 Council may, without prejudice to any accrued rights or remedies under the Contract, terminate the Contract forthwith by written notice to the Contractor with immediate effect.

15.3. Termination on Corrupt Gifts Or Fraud

15.3.1. 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 to the Contractor with immediate effect.

15.3.2. 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 to the Contractor and the Contract will terminate within 30 days of receipt of such termination notice unless within 30 days of receipt of such termination notice 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 Contractor procures the termination of the appointment of their employer and (if necessary) procures the performance of such part of the Services by another person.

15.3.3. Any notice of termination under this clause 15.3 shall specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which the Contract will terminate, in accordance with the applicable provision of this clause 15.3.

15.4. **Termination Upon Force Majeure**

15.4.1. If a Force Majeure Event prevents either party from performing its obligations under the Contract in any material respect for a period of 90 consecutive days then provided the notification requirements set out in clause 4 (Force Majeure) have been complied with, without prejudice to any accrued rights or remedies under the Contract, either party may terminate the Contract by giving 30 days written notice to the other party.

15.5. **Expiry**

15.5.1. The Contract shall terminate automatically on expiry of the Initial Term or Term unless it shall have been terminated earlier in accordance with the provisions of the Contract. The Contractor shall not be entitled to any compensation on expiry of the Initial Term or Term.

15.6. **Effect of Termination or Expiry**

15.6.1. 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.

15.7. **Consequences of Termination**

15.7.1. Where the Council terminates the Contract under clause 15.1 to 15.3 (inclusive) and then makes other arrangements for the provisions of the Services, no payments shall be due to the Contractor on termination and the Council shall:

- (a) be entitled to recover from the Contractor the costs of making those other arrangements and any additional expenditure reasonably incurred by the Council throughout the remainder of the Term.
- (b) not be obliged to make further payments to the Contractor until the Council has established the final costs of making those other arrangements.

15.7.2. Where the Contract is terminated in accordance with clause 15.4 (Termination Upon Force Majeure), the costs arising as a result of the termination shall be borne equally between the Parties.

15.8. **Survival**

- 15.8.1. Termination of the Contract for any reason shall not affect this clause 15.8 and the following clauses which shall continue in force after such termination: clause 1.1 (Definitions and Interpretation); clause 5.3 (Assistance in Legal Proceedings); clause 6.1 (Council Liability to be Excluded); clause 7.4 (Transfer of Assets); clause 9.5 (Confidentiality); clause 9.7 (Information Laws); clause 11 (Indemnities and Limitations on Liability); clause 13.2 (Disputed Invoices); clause 13.4 (Interest on Late Payments); clause 13.7.3 (retention of records); clause 14.3 (Contractor's Obligations and Indemnities); clause 15 (Termination); clause 16.3.2 (Sub-Contracting); clause 17 (Problem Solving, Dispute Avoidance and Resolution); clause 19.4 (Notices); clause 19.7 (Duty to Co-operate); clause 19.10 (Set-off); clause 19.12 (Law of Contract and Jurisdiction).

16. CHANGE IN CONTROL, ASSIGNMENT, NOVATION AND SUB-CONTRACTING

16.1. Change of Control of the Contractor

- 16.1.1. Subject to clause 16.1.2, the Contractor shall inform the Council immediately of any change in the ownership of the Contractor.

- 16.1.2. For the purpose of paragraphs 16.1.1 above the following circumstances shall be disregarded:

- (a) any change in beneficial or legal ownership of any shares that are listed on a stock exchange;
- (b) any transfer of shares or of any interest in shares by a person to its Affiliate.

16.2. Contractor Assignment and Novation

- 16.2.1. The Contractor shall not assign, novate or otherwise dispose of or create any trust in relation to all or any of its rights and obligations under the Contract to any person without the prior written consent of the Council such consent not to be unreasonably withheld or delayed.

16.3. Sub-Contracting

- 16.3.1. The Contractor shall not Sub-Contract the provision of the Services or any part thereof without the prior written consent of the Council.

- 16.3.2. The Contractor shall remain responsible to the Council for the performance of its obligations under the Contract notwithstanding the appointment of any Sub-Contractor and shall be responsible for the acts omissions and neglects of its Sub-Contractors.

- 16.3.3. Where the Council has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall be sent by the Contractor to the Authorised Officer within 2 Business Days of issue.

16.4. Council Novation

- 16.4.1. The Council shall be entitled to:

- (a) assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to any Contracting Authority; or
- (b) novate the Contract to any other body established by the Crown or under statute in order to substantially to perform any of the functions that previously had been performed by the Council,
- (c) provided that any such assignment, novation or other disposal shall not

increase the burden or place Contractor in a worse position under the Contract.

17. PROBLEM SOLVING, DISPUTE AVOIDANCE AND RESOLUTION

17.1. Referral to the Authorised Officer and the Contractor's Manager

17.1.1. Any difference or dispute arising under the Contract ("**Dispute**") shall in the first instance be referred to the Authorised Officer and the Contractor's Manager who shall use all reasonable skill, care and diligence to ensure they receive the views of all parties and consider all solutions proposed when attempting to resolve the Dispute.

17.1.2. Where the Authorised Officer and the Contractor's Manager do not achieve within 28 days of being notified of the Dispute a solution acceptable to all parties involved and provided no right of termination has been exercised, then clause 17.2 (Mediation) shall apply.

17.2. Mediation

17.2.1. If the Authorised Officer and the Contractor's Manager is unable to resolve a Dispute in accordance with clause 17.1 above, and provided no right of termination has been exercised, the parties may agree to refer the Dispute to Mediation. The parties can agree that Mediation is not an appropriate method to resolve the Dispute and instead refer the matter to an independent expert. In that situation clause 17.3 (Independent Expert) shall apply.

17.2.2. Moreover, the parties may, by agreement, refer the Dispute to Mediation at any time, whether before or after the Dispute is referred to the independent expert or to the courts, but before the issue of the decision of the independent expert or the courts.

17.2.3. If, within 7 days of one party notifying the other that it wishes to refer the Dispute to Mediation, the parties are unable to agree that Mediation is the appropriate forum for resolution of the Dispute then clause 17.3 (Independent Expert) shall apply (provided always that no right of termination has been exercised).

17.2.4. Where the parties wish to have a Dispute resolved by Mediation, but are unable to agree on the appointment of a Mediator, either party may apply to CEDR to nominate a mediator. Each of the parties will ensure that it is represented in the Mediation by an individual with authority to settle the Dispute and to sign any settlement agreement that may be agreed.

17.2.5. The mediator shall, in consultation with the parties determine the timetable and procedure for the mediation. Unless otherwise agreed, the CEDR Mediation Rules in force at the commencement of the Mediation will apply.

17.2.6. The Mediation will be conducted on a without prejudice basis and in strictest confidence.

17.2.7. The mediator shall incur no legal liability to the parties in respect of his or her role in relation to the Mediation, except in the case of proven fraudulent conduct on the part of the mediator.

17.2.8. If a Dispute is settled through Mediation, the terms of the settlement will be recorded in writing in a legally binding form signed by a duly authorised representative of each of the parties. If a settlement is reached while proceedings are pending, the parties acknowledge that an appropriate application must be made to the court or other relevant tribunal to render the terms of the settlement as a consent order or award.

- 17.2.9. If, within 45 calendar days of the mediator being appointed (or such other time as may be agreed by the parties), the Mediation has not resulted in the settlement of the Dispute, then the Mediation procedure shall, unless otherwise agreed, be terminated. In that event, any proceedings or determination by the independent expert will resume.
- 17.2.10. If either party withdraws from the Mediation at any time, the Mediation procedure will be terminated and either party will be free to refer the Dispute to an independent expert in accordance with clause 17.3 below, unless the Dispute has already been referred to the independent expert or proceedings have already commenced, in which case the expert determination or proceedings will resume.
- 17.2.11. No-one appointed to act as mediator shall be called to give evidence in any subsequent proceedings between the parties, nor shall any mediator be entitled to act as an advisor to either party in any subsequent proceedings, whether as counsel, solicitor or independent expert, without the prior written consent of the other party. The mediator shall not act as independent expert under clause 17.3 below.

17.3. **Independent Expert**

- 17.3.1. If the Dispute cannot be resolved pursuant to clause 17.1 (Referral to the Authorised Officer and the Contractor's Manager) or clause 17.2 (Mediation), or if it is agreed in accordance with clause 17.2.1 that Mediation is not the appropriate forum to resolve the Dispute 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 14 days to be appointed at the request of either party by the Relevant Professional Body provided always that no right to termination has been exercised.
- 17.3.2. Within seven days of his appointment, the independent expert will establish the procedural rules to be applied to the determination which must accord with the following:
- (a) Each party will be entitled to make submissions to the independent expert and supply the independent expert with relevant data and information;
 - (b) Communications from a party to the independent expert or from the independent expert to a party shall be copied to the other party at the same time and by the same method;
 - (c) The independent expert will be entitled to make site visits or inspections as he considers is necessary or appropriate;
 - (d) The independent expert shall not take into consideration any document or statement which has not been made available to the other party for comment;
 - (e) Any failure by a party to respond to any request or direction by the independent expert shall not invalidate the expert's determination;
 - (f) The independent expert must give his determination in writing with reasons within 21 days of submission of all evidence. He may, but will not be bound to, give the parties a draft of his determination in which case he will allow time for the parties to make comments on the draft before the determination is finally issued.
- 17.3.3. The decision of such independent expert shall be conclusive and binding on the parties in the absence of manifest error.

17.3.4. 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.

17.3.5. The Relevant Professional Body shall be:

- (a) in the case of a Dispute under clause 13 (Payment Provisions) the Institute of Chartered Accountants in England and Wales (or any successor body);
- (b) in the case of a Dispute under clause 2 (the Services), clause 3 (Variations to the Services) and any provision of the Specification the Chartered Institution of Wastes Management (or any successor body); and
- (c) 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.

17.4. **General**

17.4.1. Provided no right of termination has been exercised, and subject to the provisions of clause 17.4.2 below, the parties shall not commence court proceedings in relation to a Dispute until the applicable procedures in clauses 17.1, 17.2 and 17.3 have been exhausted.

17.4.2. The dispute resolution procedure pursuant to clauses 17.1, 17.2 and 17.3 shall only apply provided a right of termination has not been exercised and shall not impose any precondition on any party or otherwise prevent or delay any party from commencing proceedings in any court of competent jurisdiction to obtain an order (whether interlocutory interim or final) restraining the other party from doing any act or compelling any other party to do any act.

18. **NOT USED**

19. **GENERAL**

19.1. **Waiver and Cumulative Remedies**

19.1.1. No term or provision of the Contract shall be considered as waived by any party unless a waiver is given in writing by that party in a manner that expressly states that a waiver is intended and such waiver shall only be operative with regard to the specific circumstances referred to.

19.1.2. The rights and remedies provided by the Contract are cumulative and, unless otherwise provided in the Contract, are not exclusive of any right or remedies provided at Law or in equity or otherwise under the Contract.

19.2. **Counterparts**

19.2.1. The Contract may be executed in one or more counterparts and any party may enter into the Contract by executing a counterpart. Any single counterpart or a set of counterparts executed in either case by all the parties shall constitute one and the same agreement and a full original of the Contract for all purposes.

19.3. **Relationship of Parties**

19.3.1. The Contractor shall not be or be deemed to be, an agent of the Council and the Contractor shall not hold itself out as having authority or power to bind the Council in any way.

19.3.2. Nothing in the Contract shall be construed as creating a partnership or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

19.4. **Notices**

19.4.1. All notices to be given under the Contract shall be in writing and shall either be delivered personally or sent by first class or by email and shall be deemed duly served:

- (a) in the case of a notice delivered personally, at the time of delivery;
- (b) in the case of a notice sent by first class pre-paid post, 2 clear Business Days after the date of dispatch; and
- (c) in the case of an email, if sent during normal working hours, then at the time of transmission and if sent outside normal working hours, then on the next following Business Day.

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

19.5. **Entire Agreement**

19.5.1. The Contract 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 whether written or oral, in relation to such matters.

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

19.5.3. Nothing in this clause 19.5 shall operate to exclude any liability for fraudulent misrepresentation.

19.6. **Amendments**

19.6.1. The Contract may not be varied except in accordance with clause 3 (Variations to the Service).

19.7. **Duty to Co-Operate**

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

19.7.2. Upon the Termination Date and in the event that the Council wishes to enter into another contract for the Services the Contractor shall (and shall procure that its Sub-Contractors will) subject to the Council complying with its obligations under the Data Protection Act 1998 and clause 9.5 (Confidentiality) comply with all reasonable requests of the Council to provide information relating to the Contractor's costs of operating and maintaining the Services.

19.8. **Illegality**

19.8.1. In the event that any part of the Contract shall become or be declared void, invalid, illegal or unenforceable for any reason whatsoever including by reason of any Law or any decision of a Court or Regulatory Body having jurisdiction over the parties or the Contract, the parties hereby expressly agree that the remaining parts and provisions of the Contract 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 Contract or as may be agreed between the parties.

19.9. Third Party Rights

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

19.10. Set-Off

19.10.1. The Contractor shall not be entitled to retain or set-off any amounts due to the Council by it under the Contract. The Council may retain or set-off any amount owed to it by the Contractor which has fallen due and payable against any amount due to the Contractor under the Contract.

19.11. Standing Orders

19.11.1. The Contractor shall comply with the requirements of the Council'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 Council's address as stated herein.

19.12. Law of Contract and Jurisdiction

19.12.1. The Contract shall be governed by and construed in accordance with the laws of England and Wales and without prejudice to clause 17 (Problem Solving, Dispute Avoidance and Resolution), each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

19.13. Best Value Duty

19.13.1. The Contractor shall throughout the Term but only to the extent of its obligations under this Contract make arrangements to secure continuous improvement in the way in which the Services are provided having regard to a combination of economy, efficiency and effectiveness and shall assist the Council in discharging its Best Value Duty in relation to the Service.

19.14. Conflict

19.14.1. In the event of there being any inconsistency or conflict between the provisions of the Contract, the conflict shall be resolved according to the following order of priority:

- (a) clauses 1 – 19 (inclusive) and Schedule 1 (Definitions and Interpretation); and
- (b) Schedules 2 – 13;

IN WITNESS whereof the parties hereto have caused their respective Common Seals to be affixed/
executed this agreement as a Deed the day and year first before written:

The Common Seal of **BATH AND NORTH**)
EAST SOMERSET COUNCIL was affixed in)
the presence of:-)

Signed as a Deed for [insert name of the Contractor]

by:

Signature

Name

Position

Signature

Name

Position

SCHEDULE 1 – DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

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

- 1.1. “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 Part 38 of the Companies Act 2006;
- 1.2. “Authorised Officer” : the representative(s) of the Council as initially listed in Schedule 5 (Officers) as the same may be replaced from time to time or the Council Connect Centre (as the case may be);
- 1.3. “Bond” : a performance bond substantially in the form set out in Schedule 11 (Bond);
- 1.4. “Business Days” : Monday to Friday (inclusive) excluding Saturdays and Sunday and all bank and public holidays;
- 1.5. “Change in Law” : the coming into effect after the Commencement Date of any Law or any amendment or variation to any Law;
- 1.6. “Commencement Date” : 1 March 2022;
- 1.7. “Contingency Site” : the alternative Treatment site(s) which receive Contract Waste following any scheduled or unscheduled closure of the Contractor’s Treatment Site;
- 1.8. “Contract” : this agreement including the Specification and all schedules and appendices attached hereto;
- 1.9. “Contract Award” : the date that the Council dispatches notification that the Contract has been awarded to the Contractor to all tenderers in accordance with regulation 86 of the Regulations;
- 1.10. “Contract Price” : the sums payable by the Council to the Contractor as set out in Schedule 2 (Price Schedule);
- 1.11. “Contract Waste” : all Food Waste collected by or on behalf of the Council in the performance of its functions with the exception of Excluded Waste;
- 1.12. “Contract Year” : a period of 12 calendar months from the Commencement Date (and from every anniversary thereafter);
- 1.13. “Contracting Authority” : as defined in the Regulations;
- 1.14. “Contractor” : *[insert name and address of Contractor]*;
- 1.15. “Contractor Assets” : all equipment, containers, materials, vehicles,

- signage and plant necessary for the proper and efficient performance of the Service during the Term;
- 1.16. “Contractor Default” : has the meaning given to it in clause 15.1.1;
- 1.17. “Contractor Premises” : all premises provided by the Contractor necessary for the provision of the Services;
- 1.18. “Contractor Variation Notice” : a notice issued by the Contractor proposing a Variation;
- 1.19. “Contractor’s Manager” : the representative of the Contractor, initially listed in Schedule 5 (Officers) as the same may be replaced from time to time;
- 1.20. “Contractor’s Tender” : the Contractor’s tender dated [*insert date*] including Service Delivery Plans, Health and Safety Policy, Tender Questionnaire and other documents submitted by him with his tender;
- 1.21. “Council” : Bath and North East Somerset Council of Council Offices Guildhall, High Street, Bath, BA1 5AW;
- 1.22. “Council’s Depot” : are the following locations:
- (a) Recycling Depot, Unit 4 Ashmead Trading Estate, Keynsham, BS31 1SX;
 - (b) Keynsham Recycling Hub; Pixash Lane (off main A4 Bath Road), Keynsham, BS31 1TP;
- 1.23. “Council Variation Notice” : a notice issued by the Council proposing a Variation;
- 1.24. “Data Controller” : has the meaning given to it in clause 9.2.2;
- 1.25. “Data Processor” : has the meaning given to it in clause 9.2.2;
- 1.26. “Default” : has the meaning given to it in clause 8.3.1;
- 1.27. “Default Notice” : a notice issued by the Council in accordance with clause 8.3.3;
- 1.28. “Delivery Date” : no later than 1 month following the Termination Date or such other date as the parties agree;
- 1.29. “Direct Delivery” : Contract Waste delivered to the Treatment Site(s) by the Council or its agents
- 1.30. ”Disposal” : landfill, or any other commensurate final disposal solution for Contract Waste;
- 1.31. “Dispute” : has the meaning given to it in clause 17.1.1;

- 1.32. "Environment Agency" : the Environment Agency established pursuant to the Environment Act 1995 and its respective successors, substitutes and assigns;
- 1.33. "Environmental Control Plan" : the environmental control plan included within Part 5 (Environmental Sustainability) of the Service Delivery Plans;
- 1.34. "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;
- 1.35. "EPA" : Environmental Protection Act 1990;
- 1.36. "Estimate" : 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;
- 1.37. "Excluded Waste" : Hazardous Household Waste, Household Clinical Waste and any material delivered by or on behalf of the Council to the Treatment Site which is not Contract Waste;
- 1.38. "Exclusivity" :
guaranteed delivery of all Contract Waste arising within Lot 1 or Lot 2 throughout the Term of the Contract
- 1.39. "Force Majeure Event" : means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including flood; violent storm; pestilence; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:
- (a) any industrial action occurring within the Contractor's or any sub-contractor's organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any sub-contract;
- 1.40. "Financial Year" : the annual period of 1 April to 31 March;
- 1.41. "Food Waste" : has the meaning given to it in paragraph 2 (Delivery of Services) of Schedule 9 (Specification)
- 1.42. "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 Contractor;

- 1.43. "Haulage Containers" : as described in paragraph 3 (Operations and Haulage Services) of Schedule 9 (Specification)
- 1.44. "Haulage Services" : the haulage services to be performed by the Contractor in accordance with paragraph 2 (Operations and Haulage Services) of Schedule 9 (Specification)
- 1.45. "Health and Safety Policy" : the health and safety policy submitted as part of the Contractor's Tender subject to any amendments or modifications as approved by the Council;
- 1.46. "Household Clinical Waste" : as defined in the Controlled Waste Regulations 1992;
- 1.47. "Index" : shall be RPI to be calculated with the following formulae:

$$\text{New CP} = \frac{\text{CP} \times \text{Latest RPI}}{\text{Initial RPI}}$$

Where:

New CP = the Contract Prices for the following Financial Year (rounded to the nearest whole pence);

CP = the Contract Prices payable to the Contract at the time of the Review;

Latest RPI = the value of the RPI for the month immediately preceding the date of the Review Date;

Initial RPI = the value of the RPI for the month immediately preceding the Review Date for the previous financial year;

- 1.48. "Information Laws" : Freedom of Information Act 2000 (FOIA) and/or the Environmental Information Regulations 2004 (EIR) and the Codes of Practice on the Discharge of 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 and all other Laws relating to access to information;
- 1.49. "Initial Term" : a period of 7 years from the Commencement Date;
- 1.50. "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;
- 1.51. "Invitation to Tender" or "ITT" : the ITT issued by the Council inviting organisations including the Contractor to tender for the Services;

- 1.52. “Irremediable Default” : has the meaning given to it in clause 8.4.1;
- 1.53. “Landfill Tax” : has the meaning given to it in section 39(1) of the Finance Act 1996;
- 1.54. “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 Council and/or the Contractor is bound to comply;
- 1.55. “Mediation” : the process set out in clause 17.2;
- 1.56. “Necessary Consents” : all approvals, certificates, exemptions, authorisations, permissions, Waste Management Licences, other licences, permits, regulations and consents necessary from time to time for the performance of the Services;
- 1.57. “New Contractor” : any person contracted to provide services to the Council the same as or similar to the Services at any time in substitution for the Contractor or any Sub-Contractor (in whole or in part);
- 1.58. “Persistent Breach” : either:
- (a) a Default which is continual or has recurred frequently within 3 months after the Council has issued a Default Notice to the Contractor in respect of that Default;
 - (b) where the Contractor has persistently failed to meet any or all of the Performance Standards (for the avoidance of doubt a failure to meet the Performance Standards on more than 3 occasions in any calendar month during the Term will amount to a persistent failure to meet the Performance Standards);
- 1.59. “Prohibited Act” : the offering or giving to a person any gift or consideration of any kind as:
- a) 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
 - b) for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Council;

- (i) committing any offence under the Prevention of Corruption Acts 1889 to 1916; or
 - (ii) 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;
- 1.60. “Prospective Tenderer” : a person who has or is invited to submit a tender in relation to the provision of the Services (in whole or in part) or services of a similar nature to any of those provided by the Contractor;
- 1.61. “Quality Management System” : the quality system as referred within section E Quality Assurance and Compliance) of Appendix 6 (Tender Questionnaire) contained within the Contractor’s Tender and as approved by the Council;
- 1.62. “Quarter” : the periods:
01 January – 31 March;
01 April – 30 June;
01 July – 30 September;
01 October – 31 December,
in each Contract Year and “Quarterly” shall be construed accordingly;
- 1.63. “Regulations” : the Public Contracts Regulations 20015;
- 1.64. “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 Council) including any health and safety enforcement agency, with power to regulate the Services and/or the Contract and their respective successors and substitutes;
- 1.65. “Relevant Professional Body” : the relevant body to hear a Dispute as set out in clause 17.3.5;
- 1.66. “Remediation Notice” : a notice issued by the Council in accordance with clause 8.3.2;
- 1.67. “Representatives” : any employee, officer, authorised agent or contractor of a party;
- 1.68. “Required Insurances” : the insurances described in Schedule 4 (Insurances) and any other insurance as may be required from time to time by Law;
- 1.69. “Review Date” : on each anniversary of the Commencement Date has the meaning given to it in clause 13.6 (Indexation) and paragraph 7 of the Price Schedule (Schedule 2);
- 1.70. “RPI” : shall be the Retail Price Index for all items excluding mortgage index payment;

- 1.71. “Service Delivery Plans” or “SDPs” : the service delivery plans submitted as part of the Contractor’s Tender for resourcing and organising the Services subject to such amendments or modifications as approved by the Council as set out in Schedule 13 (Service Delivery Plans);
- 1.72. “Services” : the Treatment Services to be provided by the Contractor under the Contract as more particularly described in clause 2 (the Services) and the Specification of the Contract;
- 1.73. “Site Rules” : the site rules submitted as part of the Contractor’s Tender for conduct on the Treatment Site as set out in Schedule 12 (Site Rules) subject to such amendments or modifications in accordance with clause 2.8.2 (Site Rules);
- 1.74. “Specification” : the specification for the Services as set out in Volume 3 (Specification);
- 1.75. “Specified Rate” : 1% above the base rate of Bank of England from time to time applicable;
- 1.76. “Staff” : 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 Services;
- 1.77. “Standstill Period” : the period of time between Contract Award and the date that the parties enter into the Contract in accordance with the Regulations;
- 1.78. “Sub-Contractor” : a person to whom the Contractor sub-contracts the whole or part of the provision of the Services in accordance with clause 16.3 (Sub-Contracting) and references to “Sub-Contract” shall be construed accordingly;
- 1.79. “Tender Questionnaire” : the tender questionnaire submitted as Appendix 10 of the Contractor’s Tender subject to any amendment or modification expressly approved by the Council;
- 1.80. “Term” : the Initial Term plus any extension(s) made pursuant to clause 1.2.2;
- 1.81. “Termination Date” : the date of expiry of the Term or such earlier date of termination in accordance with the terms of the Contract;
- 1.82. “Transfer Stations” : means the waste transfer station Midland Road, Bath, BA1 3AT or such other waste transfer station as the Council will notify to the Contractor from time to time.
- 1.83. “Transferring Notice” Asset : has the meaning given to it in clause 7.4.1;
- 1.84. “Treatment” : any method of in-vessel composting or anaerobic digestion, or variants under this terminology, to

process Contract Waste into a useable product and "Treat" shall be construed accordingly;

- 1.85. "Treatment Site" : [*insert address*];
- 1.86. "Value" : has the meaning given to it in clause 7.4.2;
- 1.87. "Variation" : any variation to the Contract (including to the Performance Standards) or to the Services;
- 1.88. "VAT" : value added tax or any similar or substituted tax;
- 1.89. "Waste Management Licence" : any integrated pollution prevention control consent or waste management licence or similar consent issued by the Environment Agency (or other appropriate regulator) from time to time in respect of any facility, site or premises used in connection with the Services;
- 1.90. "Working Hours" : the working hours are defined in paragraph 1.2 (Operations & Management) of Schedule 9 (Specification).
- 1.91. "Working Plan" : the working plan which should cover the infrastructure to be provided, the descriptions of the waste management processes to be carried out on the Treatment Site and details of the pollution control measures and monitoring arrangements;

2. INTERPRETATION

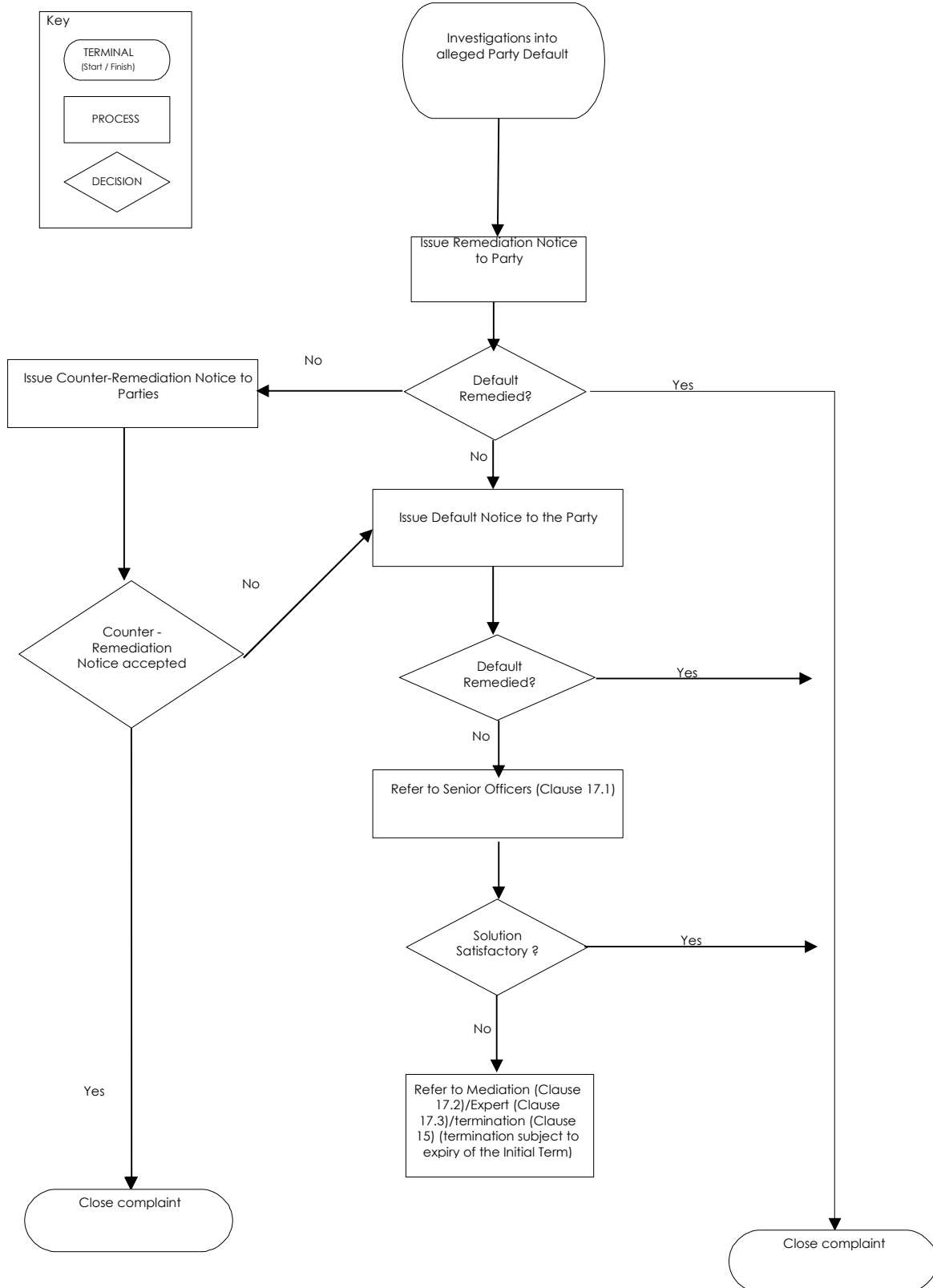
2.1. In the Contract:

- 2.1.1. time shall, during the period of summer time, be British Summer Time but otherwise Greenwich Mean Time;
- 2.1.2. 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;
- 2.1.3. 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;
- 2.1.4. clause headings and notes are for ease of reference only and do not affect the interpretation of the Contract.

SCHEDULE 2 – PRICE SCHEDULE

(see overleaf)

SCHEDULE 3 – MONITORING PROCESS



SCHEDULE 4 – INSURANCES

Public Liability insurance with a limit of indemnity of not less than £5 million pounds in relation to each and every claim during each 12 month period in respect of claims arising from the Services;

Employer's Liability insurance with a limit of indemnity of not less than £10 million pounds in relation to each and every claim during each 12 month period in respect of claims arising from the Services;
and

All other insurances required by Law.

SCHEDULE 5 – OFFICERS

Authorised Officer: Carol Maclellan
Assistant Director - Environmental Services

Bath and North East Somerset Council
Council Offices
Lewis House
Manvers Street
Bath
BA1 5AW
Tel: 01225 394 106
Email: carol_maclellan@bathnes.gov.uk

Sarah Alder
Team Manager – Strategy & Contracts

Bath and North East Somerset Council
Council Offices
Lewis House
Manvers Street
Bath
BA1 5AW
Tel: 01225 394 187
Email: sarah_alder@bathnes.gov.uk

Lisa Gore
Team Leader – Strategy & Contracts

Bath and North East Somerset Council
Council Offices
Lewis House
Manvers Street
Bath
BA1 5AW
Tel: 01225 394 280
Email: lisa_gore@bathnes.gov.uk

Contractor's Manager: *[insert name and contact details]*

SCHEDULE 6 – CONTRACTOR CONFIDENTIAL INFORMATION

[The Contractor is to indicate here which information submitted with its tender it considers to be confidential and therefore not required to be disclosed pursuant to the Information Laws].

SCHEDULE 7 – VARIATION PROCEDURE

1. COUNCIL VARIATION

- 1.1. If the Council requires a Variation it shall serve a Council Variation Notice on the Contractor in accordance with the provisions of this paragraph 1.
- 1.2. The Council 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 3.3.2 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 an Estimate together with a statement by the Contractor confirming any:
 - 1.3.1. 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 Consents,as a result of the Variation proposed by the Council.
- 1.4. As soon as practicable (but in any event within 30 days) after the Council 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 Services and amendments to the Contract Price.
- 1.5. If the parties cannot agree the contents of the Estimate then the Council shall either:
 - 1.5.1. withdraw the Council Variation Notice; or
 - 1.5.2. refer the dispute to be determined in accordance with clause 17 (Problem Solving, Dispute Avoidance and Resolution).
- 1.6. As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to clause 17 (Problem Solving, Dispute Avoidance and Resolution), the Council shall either:
 - 1.6.1. confirm in writing the Estimate (including any modification or amendments made to it); or
 - 1.6.2. withdraw the Council Variation Notice.

2. CONTRACTOR VARIATION

- 2.1. If the Contractor wishes to introduce a Variation, it must serve a Contractor Variation Notice on the Council in accordance with the provisions of this paragraph 2.
- 2.2. The Contractor Variation Notice must:
 - 2.2.1. set out the proposed Variation in sufficient detail to enable the Council 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 3.3.2 of the Contract;
 - 2.2.4. indicate if there are any dates by which a decision by the Council is critical; and
 - 2.2.5. set out the timetable for implementing the proposed Variation.
- 2.3. The Council shall evaluate the Contractor's proposed Variation in good faith, taking account all relevant issues, including whether:
- 2.3.1. the Variation is required as a result of the operation of clause 3.1 (Council Variations) 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 Services or the likelihood of successful delivery of the Services;
 - 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; and
 - 2.3.6. whether the Variation materially affects the risks or costs to which the Council is exposed.
- 2.4. As soon as practicable after receiving the Contractor's Variation Notice the parties shall meet and discuss the matters referred to in it. During their discussions the Council may propose modifications or accept or (subject to clause 3.2.3 of the Contract) in its absolute discretion reject the Variation proposed by in the Contractor Variation Notice.
- 2.5. If the Council accepts the Contractor 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 in its acceptance. Within this period, the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend the Contract which are necessary to give effect to the Variation.
- 2.6. If the Council rejects the Contractor Variation Notice, it shall not be obliged to give reasons for its rejection and the Contractor shall not be entitled to refer the matter for determination under clause 17 (Problem Solving, Dispute Avoidance and Resolution).

SCHEDULE 8 – PERFORMANCE STANDARDS

Preamble

- A. The table below sets out the Performance Standards to be achieved by the Contractor pursuant to clause 8.2 (Performance Standards). The Performance Standards are indicative of the areas of performance which the Council regards as key and are subject to annual review in accordance with the Contract.
- B. The Contractor shall establish, as part of the requirements of clause 8.2 (Performance Standards) procedures for demonstrating progress towards achieving the Performance Standards.

Item	Performance Standard	Measure	How Monitored	Failure to Meet Standard
1.	Ensure the Treatment process operates at the levels stated in the Contractor's tender submission and is maintained throughout the Term of the Contract.	Recycling, composting, recovery rates and landfill diversion rates specified in the tender submission.	Annual review of tonnage data.	Remedy through the Default notice procedure.
2.	Provide a responsive and efficient collection service of Haulage Containers from the Council's Depot.	Collections undertaken within 24 hours after notice provided.	Report of problems from Council Depot management team	Remedy through the Default notice procedure.
3.	Maintain the Haulage Containers to ensure they are fit for purpose throughout the Term to the standards specified in the Contractor's Service Delivery Plan	Maintained to ensure all Contract Waste is sealed and contained	Communication on maintenance inspections, repairs and replacement schedules for the containers	Remedy through the Default notice procedure.
4.	Ensure the Treatment Site has a fully calibrated and operational weighbridge of the Term of the Contract.	Availability and accuracy of the Contractor's weighbridge	Report of problems from waste delivery drivers, monthly monitoring review.	Remedy through the Default notice procedure.
5.	Ensure that the Treatment and Disposal Site(s) is/are open during Working Hours	Site operations	Report of problems from waste delivery drivers	Remedy through the Default notice procedure.
3.	Ensure that delivery vehicles are on the Treatment and Disposal Site(s) for no longer than 30 minutes on any one occasion.	Site operations	Report of problems from waste delivery drivers	Remedy through the Default notice procedure.
6.	Ensure the Council is kept informed and up-to-date with any changes in the end	Quality and timeliness of data provided	Review of monthly reports received by the agreed date each	Remedy through the Default notice procedure.

	outlets used for the Process Outputs.		month.	
7.	Provide to the Council on a monthly basis, within 5 Business Days of the end of the month, the statistical information as set out in the Specification	Quality and timeliness of data provided	Receipt of monthly reports received by the agreed date each month. Rectification 1 day from notification of the breach by the Council's Authorised Officer(s)	Remedy through the Default notice procedure. £70 per day administration charge following the deadline stated in the rectification notice

SCHEDULE 9 – SPECIFICATION

See Volume 3 of the ITT

SCHEDULE 10 – PARENT COMPANY GUARANTEE

(1) Bath and North East
Somerset Council

(2) [name of Guarantor]

Guarantee In Respect Of A
Contract For Residual
Waste Treatment Services

PARTIES

(1) [NAME OF THE GUARANTOR] (Registered company number) whose registered office address is at [insert address] (the Guarantor); and

(2) Bath and North East Somerset Council of Council Offices Guildhall High Street Bath BA1 5AW (the Council).

1. WHEREAS:

(A) The Council and the Contractor (defined below) have entered into a Contract (defined below) for the provision of Treatment services as more particularly described in the Contract (defined below).

(B) The Contractor is a wholly-owned subsidiary of the Guarantor.

(C) It is a requirement of the Contract that this Deed is entered into by the Guarantor.

NOW IT IS AGREED AS FOLLOWS:

2. DEFINITIONS AND INTERPRETATION

In this Guarantee the following words expressions have the following meanings:

- 2.1. "Contract" : the contract entered into by the Council (1) and the Contractor (2) on [•] 2016 for the Treatment services;
- 2.2. "Contractor" : [insert name of the Contractor] of [insert registered office of the Contractor] (company registration number);
- 2.3. Reference to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted.
- 2.4. The headings to the clauses contained herein are for the convenience of the parties and are not intended to affect the interpretation thereof.
- 2.5. Unless the context otherwise requires:
- 2.5.1. references in this Guarantee to clauses and sub-clauses are references to those contained in this Guarantee; and
- 2.5.2. defined terms shall have the same meaning as they are given in the Contract.
- 2.6. Any references in this Guarantee to:
- 2.6.1. "**administration order**" against, "appointment of an administrator" in respect of, or the "winding up" of, any person will be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which that person is incorporated or otherwise situated or any jurisdiction in which that person carries or carried on business; and
- 2.6.2. "**agreement**" also includes a contract, concession, deed, franchise, licence, treaty, undertaking, instrument, arrangement or understanding (in each case, whether oral or written);

- 2.6.3. **"assets"** of any person shall be construed as a reference to the whole or any part of that person's assets, business, undertaking, investments, property, rights and revenues (including any right to receive revenues);
- 2.6.4. **"Council"** includes the Council's successors, assigns and transferees;
- 2.6.5. this **"Guarantee"** are references to this instrument and all rights and obligations comprised in this instrument as from time to time amended, varied, supplemented or assigned;
- 2.6.6. **"Guarantor"** includes its successors under this Guarantee;
- 2.6.7. **"law"** includes common or customary law and any bye-law, regulation, legislation (including delegated legislation) constitution, decree, judgment, order, ordinance, statute, treaty or other legislative measure in any jurisdiction or any present or future directive, regulation, request, requirement or guideline (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive, regulation, request, requirement or guideline is addressed);
- 2.6.8. **"liability"** and "liabilities" include any obligation or liability (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise);
- 2.6.9. **"person"** means any individual, firm, company, partnership, corporation, joint venture, association, trust, unincorporated association, agency, Government department or agency of the Council whether or not having separate legal personality;
- 2.6.10. **"tax"** includes all present and future taxes, imposts, levies, assessments, duties, charges, fees, deductions and withholdings in all relevant jurisdictions and all interest on them, additions to them and penalties and fines in respect of them.

3. GUARANTEE

- 3.1. The Guarantor hereby unconditionally and irrevocably guarantees to the Council the full prompt and complete performance by the Contractor of all of the Contractor's obligations under the Contract and the due and punctual payment by the Contractor of all sums due and payable to the Council by the Contractor pursuant to the terms of the Contract and irrevocably and unconditionally undertakes as a continuing obligation to the Council that if for any reason there is any default in the payment of any such sums by the Contractor to the Council the Guarantor will unconditionally on first demand by the Council pay to the Council in full the monies which are due and payable to the Council and unpaid by the Contractor.

4. WAIVER OF SURETY DEFENCES

- 4.1. Without prejudice to the Council's rights against the Contractor, as between the Council and the Guarantor, the Guarantor's liability under this Deed shall not be released, discharged or diminished by:
 - 4.1.1. any legal limitation, lack of capacity or authorisation or defect in the actions of, or any invalidity or unenforceability of any obligation assumed or owed or expressed to be assumed or owed by, the

Contractor in relation to the Contract;

- 4.1.2. any variation of the Contract;
- 4.1.3. any forbearance, neglect or delay in seeking performance of any obligation assumed or owed or expressed to be assumed or owed by the Contractor, any granting of time, indulgence or other relief to the Contractor in relation to such performance or any composition with, discharge, waiver or release of the Contractor;
- 4.1.4. the insolvency, liquidation, winding up or dissolution of the Contractor or the making of an administration order, appointment of an administrator, or the appointment of an administrative receiver or other receiver against the Contractor or the making of any arrangement, composition or compromise by the Contractor with any of its creditors or the termination of any of the rights, interests, liabilities and/or obligations of the Contractor pursuant to the Contract and/or in respect of all or any of the sums payable by the Contractor;
- 4.1.5. the existence of any claim, right of set-off or other rights which the Guarantor may have at any time against the Contractor, the Council or any other person, or which the Contractor may have at any time against the Council, however arising;
- 4.1.6. any change in the constitution of the Guarantor, the Contractor or the Council; or
- 4.1.7. any other thing, act, omission, fact or circumstance which might, but for this clause operate in any way to exonerate, release, discharge or diminish the liability of the Guarantor under this Deed.

5. PRINCIPAL OBLIGOR

- 5.1. The obligations and liabilities expressed to be undertaken by the Guarantor under this Guarantee are those of principal obligor and not merely as a surety.
- 5.2. The Council shall not be obliged before taking steps to enforce any of its rights and remedies under this Guarantee:
 - 5.2.1. to take action or obtain judgment in any court against the Contractor;
 - 5.2.2. to make or file any claim in a bankruptcy, liquidation, administration compromise or arrangement or insolvency of the Contractor ;or
 - 5.2.3. to make demand, enforce or seek to enforce any claim, right or remedy against the Contractor.

6. CONTINUING OBLIGATION

- 6.1. This Guarantee shall remain in full force and effect until all monies and liabilities now or hereafter due and owing or incurred by the Contractor to the Council have been satisfied in full and this Guarantee is in addition to and not in substitution for any other guarantee, undertaking, indemnity, security or other obligation given or owing to the Council in respect of sums due or liabilities arising pursuant to the terms of the Contract.

7. NO COMPETING CLAIMS

- 7.1. If any monies shall become payable under or in respect of this Guarantee, the

Guarantor shall not, so long as any monies due and payable by the Contractor to the Council under the terms of the Contract remain unpaid:

- 7.1.1. seek to recover, claim payment of or accept any monies or other property in respect of any sum for the time being due to the Guarantor from the Contractor on any account whatsoever or exercise any other right or remedy which the Guarantor has in respect of any such sum; or
 - 7.1.2. claim or exercise any right of set-off, counter-claim, subrogation or indemnity against the Contractor or claim or take any benefit of or share in any assets, composition, security or other benefit, right or remedy available to the Council in respect of all or any of the sums payable by the Contractor; or
 - 7.1.3. claim or prove for or accept any payment in any composition by or in the insolvency or liquidation of the Contractor in competition with the Council in respect of any monies owed to the Guarantor by the Contractor on any account whatsoever but shall afford the Council the full benefit of any right the Guarantor may have so to claim or prove and pay to the Council all monies received under that claim, immediately upon receipt by the Guarantor; or
 - 7.1.4. claim or exercise in respect of the Contractor any other right or remedy of a surety or claim or enjoy the benefit of any right, remedy or equity available to or exercisable by the Contractor.
- 7.2. The Guarantor declares and undertakes with the Council that the Guarantor has not taken and shall not take or accept any security of whatever nature from the Contractor in connection with this Guarantee, and in the event of the Guarantor having taken or taking any such security in contravention of this clause or receiving any monies or other property in breach of clause 7.1.1, the Guarantor declares that they will be held in trust for the Council and as security for the Council and that the Guarantor will immediately deposit them and all documents relating to them with the Council and will immediately account to the Council for all monies at any time received by or on behalf of the Guarantor in respect of them.

8. APPROPRIATION

- 8.1. The Guarantor shall not and may not direct the application by the Council of any sums received by the Council from the Guarantor under, or pursuant to, any of the terms of this Guarantee.

9. EXPENSES AND TAXES ETC

- 9.1. The Guarantor shall, on demand, pay to the Council on the basis of a full indemnity all expenses (including legal and out-of-pocket expenses) incurred in connection with preservation and enforcement or the attempted preservation or enforcement of any of the rights of the Council under this Guarantee and/or any related documents.
- 9.2. All amounts stated in this Guarantee to be payable by the Guarantor are exclusive of value added tax or any other tax from time to time properly chargeable in respect of payments made under this Guarantee, and accordingly the Guarantor shall pay all tax of that nature together with those amounts upon production (where appropriate) of a suitable invoice or other relevant documentation by the Council.

10. ASSIGNMENT

- 10.1. The Guarantor may not assign or transfer any of its rights or obligations under this Guarantee without the prior written consent of the Council.
- 10.2. The Council may at any time and without the consent of the Guarantor assign, transfer or allow other parties to participate in the benefit of the whole or any part of this Guarantee to the extent permitted under the Contract

11. GENERAL

- 11.1. The Guarantor agrees to execute and do all such further documents, acts and things as may be necessary from time to time in the opinion of the Council to establish, maintain and protect the rights of the Council under this Guarantee and generally to carry out and procure the carrying out of the intent of this Guarantee.
- 11.2. No failure to exercise and no delay in exercising on the part of the Council any right, power or remedy under this Guarantee shall operate as a waiver of it nor shall any single or partial exercise by the Council of any right, power or remedy preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 11.3. The rights and remedies in this Guarantee are cumulative and not exclusive of any rights or remedies provided by law.
- 11.4. No provision of this Guarantee may be amended, modified, waived, discharged or terminated, nor may any breach of any provision of this Guarantee be waived or discharged, except with the express prior written consent of the Council.
- 11.5. If any one or more of the provisions contained in this Guarantee shall be invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions contained in this Guarantee shall, so long as the commercial purpose of this Guarantee is still capable of performance, not in any way be affected or impaired thereby.

12. NOTICES

- 12.1. All demands, notices, notifications or other communication made by the Council under or in connection with this Guarantee shall be in writing and shall be delivered by hand or recorded delivery or sent by prepaid first class post and sent to the Guarantor at the address set out above or such other address in the United Kingdom as may be specified by notice in writing by the Guarantor to the Council. Such demand shall be deemed to have been made and received by the Guarantor:
 - 12.1.1. if delivered by hand, at the time of delivery;
 - 12.1.2. if sent by post on the next business day after the date of posting. For the purpose of the clause, "business day" means any day other than a Saturday, Sunday or a day which is a public holiday in the place both of despatch and address of the notice.

13. NO NOTIFICATIONS

The Council shall not be required to advise the Guarantor of its dealings arrangements or communications with the Contractor or of any default by the Contractor of which the Council may have knowledge.

14. WARRANTIES AND REPRESENTATIONS

- 14.1. The Council has entered into the Contract and has agreed to accept this Guarantee in reliance on the following representations and the Guarantor hereby warrants and represents to the Council that:
- 14.1.1. the Guarantor has full power and authority to enter into and perform its obligations under this Guarantee and it has taken all necessary corporate and other action to authorise the execution, delivery and performance of this Guarantee
 - 14.1.2. this Guarantee constitutes the legal, valid and binding obligations of the Guarantor enforceable in accordance with its respective terms;
 - 14.1.3. the execution, delivery and performance of this Guarantee do not and will not violate in any respect any provision of (i) any law, or (ii) the memorandum and articles of association of the Guarantor or (iii) any agreement or other instrument to which the Guarantor is a party or which is binding upon it or any of its assets, and do not and will not result in the creation or imposition of any encumbrance on its assets in accordance with any agreement or other instrument;
 - 14.1.4. no event has occurred which, with the giving of notice, or the lapse of time or upon any other condition being satisfied or determination being made would be likely to constitute a default under or in respect of any law or agreement or instrument which is likely either to have a material adverse effect on the assets, financial condition, prospects or operations of the Guarantor or materially and adversely to affect its ability to observe or perform its obligations under this Guarantee;
 - 14.1.5. all information furnished by the Guarantor or any person on its behalf to the Council or any person on its behalf in connection with this Guarantee was and remains true and complete in all respects and there is no other fact or circumstance relating to the affairs of the Guarantor which has not been disclosed to the Council which non-disclosure renders any of that information misleading, and all expressions of expectation, intention, belief and opinion contained in any of that information were honestly made on reasonable grounds after due and careful consideration.

15. DEMANDS

- 15.1. The Council may make any number of demands under this Guarantee.

16. GUARANTOR'S SUCCESSORS

- 16.1. This Guarantee shall be binding upon the Guarantor's successors in title.

17. DURATION OF GUARANTEE

- 17.1. This Guarantee shall continue in full force and effect until 12 months after the termination of the Contract (whether by effluxion of time or otherwise) when this Guarantee shall forthwith cease to have effect in respect of the Contract.

18. GOVERNING LAW AND JURISDICTION

- 18.1. This Guarantee shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto irrevocably submit to the exclusive jurisdiction of the courts of England and Wales as regards any claim or matter arising in relation to this Guarantee.

IN WITNESS whereof the Guarantor has executed this Guarantee as a Deed on the date set out above.

EXECUTED and DELIVERED)
as a DEED for and on behalf)
of the GUARANTOR by)

Director

Director/Secretary

The Common Seal of **BATH AND**)
NORTH EAST SOMERSET COUNCIL)
was affixed in the presence of:-)

_____)

SCHEDULE 11 – BOND

PERFORMANCE BOND

Bath and North East Somerset Council

Waste Treatment Services

By this Bond we, [insert name of the Contractor], of [insert registered address (registered company number [] (“the Contractor”) and [name of surety] , whose registered office is situate at: []), (the Surety) are jointly and severally bound to the Bath and North East Somerset Council of Council Offices Guildhall High Street Bath BA1 5AW (“the Council”) in the sum of £X (insert amount in numbers).

WHEREAS by a Contract of even date made between the Council and the Contractor, the Contractor has contracted with the Council to provide the Services described therein, in accordance with the terms of the said Contract.

If the Contractor shall fail to duly perform and observe all the terms, provisions and conditions and stipulations of the Contract the Surety shall satisfy and discharge the damages debts interests and costs sustained by the Council thereby up to the amount of this Bond. No alteration in the terms of the Contract or in the extent or nature of the Service to be performed thereunder and no allowance of time by the Council or the Authorised Officer under the Contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning the said Contract on the part of the Council or the Authorised Officer shall in any way release the Surety from any liability under this Bond until its end date, being 6 months following expiry or termination of the Term, howsoever caused (“the End Date”).

The Bond shall not be assigned without the Council’s prior written consent (which shall not be unreasonably withheld).

It is acknowledged by the parties hereto that this Bond may be enforced and relied upon by the Council up until the End Date.

In witness whereof the parties hereto have caused their respective common seals to be hereunto affixed/have hereunto set their hands and seals the day and year first before written.

SIGNED AS A DEED for)
[insert name of the Contractor])
by:-).....Director

.....
Director/Secretary

SIGNED AS A DEED for)
[Name of surety] by:-)
.....Director

.....
Director/Secretary

SCHEDULE 12 – SITE RULES

[to be inserted by the Contractor]

SCHEDULE 13 – SERVICE DELIVERY PLANS

Please insert Service Delivery Plans agreed with successful tenderer

SCHEDULE 14 – EMPLOYEES

1. Interpretation

1.1 The definitions and rules of interpretation in this paragraph apply in this 14. All other definitions are as set out in Schedule 1.

“Contractor’s Final Staff List”	the list of all the Contractor's Personnel engaged in or wholly or mainly assigned to the provision of the Services or any part of the Services at the Service Transfer Date.
“Contractor’s Personnel”	all employees, staff, other workers, agents and consultants of the Contractor and of any [Sub-Contractors] who are engaged in the provision of the Services from time to time.
“Contractor’s Provisional Staff List”	a list prepared and updated by the Contractor of all the Contractor's Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list.
“Employees”	those employees whose contracts of employment transfer to the Contractor from the Council as at the Commencement Date
"Employee Liability Information":	<p>in respect of each of the Employees:</p> <ul style="list-style-type: none">(a) the identity and age of the Employee;(b) those particulars of employment that an employer is obliged to give the Employee under section 1 of the Employment Rights Act 1996;(c) information about any disciplinary action taken against the Employee and any grievances raised by the Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;(d) information about any court or tribunal case, claim or action either brought by the Employee against the Council within the previous two years or where the Council has reasonable grounds to believe that such action may be brought against the Contractor arising out of the Employee's employment with the Council; and(e) information about any collective agreement which will have effect after the [Commencement Date] in relation to the Employee pursuant to regulation 5(a) of the Employment Regulations.
“Employment Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (<i>SI 2006/246</i>).
“Replacement Contractor”	any third party Contractor of Replacement Services appointed by the Council from time to time.
“Replacement Services”	any services which are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of this

“Service Transfer Date” agreement, whether those services are provided by the Council internally or by any Replacement Contractor.
the date on which the Services (or any part of the Services), for whatever reason transfer from the Contractor to the Council or any Replacement Contractor.

"Staffing Information": in relation to all persons detailed on the Contractor's Provisional Staff List, such information as the Council may reasonably request (subject to the Data Protection Act 1998), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (c) the identity of their employer or relevant contracting party;
- (d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- (e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (f) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and Council car schemes applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- (i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).

“Transferring Employees” those employees whose contract of employment will be transferred to the Council or a Replacement Contractor pursuant to the Employment Regulations on expiry or termination of this agreement.

2. Transfer of employees to the Contractor at the Commencement Date

2.1 The Council and the Contractor believe that, pursuant to the Employment Regulations, at the Commencement Date, the Contractor will become the employer of the Employees.

2.2 The Council represents and warrants to the Contractor that:

2.2.1 the Council has provided the Employee Liability Information to the Contractor regarding each of the Employees either in writing or by making it available to the Contractor in a readily accessible form;

2.2.2 the Employee Liability Information contains information as at a specified date not more than 14 days before the date on which the information was provided to the Contractor;

- 2.2.3 the Council has notified the Contractor in writing of any change in the Employee Liability Information since the date on which it was provided; and
- 2.2.4 the Employee Liability Information was provided not less than 28 days before the Commencement Date.
- 2.3 All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Council up to and including the Commencement Date and by the Contractor with effect from the Commencement Date.
- 2.4 The Contractor shall indemnify the Council in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Council including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
 - 2.4.1 any failure by the Contractor to comply with its obligations pursuant to the Employment Regulations; and
 - 2.4.2 anything done or omitted to be done by the Contractor in respect of any of the Employees whether before or after the Commencement Date.
- 2.5 During the currency of this agreement the Contractor shall provide to the Council any information the Council may reasonably require relating to any individual employed or engaged in providing the services under this agreement (subject to the Data Protection Act 1998).

3. Employment exit provisions

- 3.1 This agreement envisages that subsequent to the commencement of this agreement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this agreement, or part, or otherwise) resulting in a transfer of the Services in whole or in part ("**Service Transfer**"). If a Service Transfer is a relevant transfer for the purposes of the Employment Regulations then, in such event, the Council or a Replacement Contractor would inherit liabilities in respect of the Transferring Employees. Accordingly if the Employment Regulations apply on a Service Transfer the provisions in paragraph 3.6 to paragraph 3.10 of this 0 shall apply. Paragraph 3.11 of this 0 shall apply to a Service Transfer which is not a relevant transfer for the purposes of the Employment Regulations. For the avoidance of doubt, all other paragraphs in this paragraph 3 of this 0 shall apply to all Service Transfers, whether or not the Employment Regulations apply.
- 3.2 The Contractor agrees that, subject to compliance with the Data Protection Act 1998:
 - 3.2.1 within 20 days of the earliest of:
 - (a) receipt of a notification from the Council of a Service Transfer or intended Service Transfer;
 - (b) receipt of the giving of notice of early termination of this agreement or any part thereof; or
 - (c) the date which is 12 months before the expiry of the Initial Term or any renewal term,

and, in any event, on receipt of a written request of the Council at any time, it shall provide the Contractor's Provisional Staff List and the Staffing Information to the Council or, at the direction of the Council, to a Replacement Contractor and it shall provide an updated Contractor's Provisional Staff List when reasonably requested by the Council or any Replacement Contractor;

- 3.2.2 at least 28 days before the Service Transfer Date, the Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Contractor's Personnel named are Transferring Employees;
 - 3.2.3 the Council shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services; and
 - 3.2.4 on reasonable request by the Council the Contractor shall provide the Council or at the request of the Council, the Replacement Contractor, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Council reasonably requests.
- 3.3 The Contractor warrants that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information will be true and accurate in all material respects.
- 3.4 From the date of the earliest event referred to in paragraph 3.2 of this 0, the Contractor agrees that it shall not without the prior written consent of the Council, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Contractor's Provisional Staff List and shall not without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed):
- 3.4.1 increase the total number of employees listed on the Contractor's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Council;
 - 3.4.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List;
 - 3.4.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Contractor's Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Council;
 - 3.4.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Staff List; and
 - 3.4.5 replace any of the Contractor's Personnel listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List.

The Contractor will promptly notify the Council or, at the direction of the Council, the Replacement Contractor of any notice to terminate employment received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.

- 3.5 At least 28 days before the expected Service Transfer Date, the Contractor shall provide to the Council or any Replacement Contractor, in respect of each person (subject to compliance with Data Protection Act 1998) on the Contractor's Final Staff List who is a Transferring Employee, their:
 - 3.5.1 pay slip data for the most recent month;
 - 3.5.2 cumulative pay for tax and pension purposes;

- 3.5.3 cumulative tax paid;
 - 3.5.4 tax code;
 - 3.5.5 voluntary deductions from pay; and
 - 3.5.6 bank or building society account details for payroll purposes.
- 3.6 In connection with a relevant transfer to which the Employment Regulations apply, the parties agree that:
- 3.6.1 the Contractor shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date. The Contractor shall indemnify the Council and any Replacement Contractor in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Council or any Replacement Contractor including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
 - (a) the Contractor's failure to perform and discharge any such obligation;
 - (b) any act or omission by the Contractor on or before the Service Transfer Date or any other matter, event or circumstance occurring before the Service Transfer Date;
 - (c) all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;
 - (d) any claim arising out of the provision of, or proposal by the Contractor to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or before the Service Transfer Date;
 - (e) any claim made by or in respect of any person employed or formerly employed by the Contractor other than a Transferring Employee for which it is alleged the Council or any Replacement Contractor may be liable by virtue of this agreement and/or the Employment Regulations;
 - (f) any act or omission of the Contractor in relation to its obligations under regulation 11 of the Employment Regulations, or in respect of an award of compensation under regulation 12 of the Employment Regulations except to the extent that the liability arises from the Council or Replacement Contractor's failure to comply with regulation 11 of the Employment Regulations; and
 - (g) any statement communicated to or action done by the Contractor or in respect of any Transferring Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Council in writing.
- 3.7 The Contractor shall indemnify the Council and any Replacement Contractor in respect of any claims arising from any act or omission of the Contractor in relation to any other Contractor's Personnel who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.
- 3.8 The parties shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer as a consequence of a Service Transfer will be fulfilled.
- 3.9 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraph 3.2 to paragraph 3.8 of this 0 to the extent necessary to ensure that any

Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor or the Council to the Contractor under paragraph 3.2 to paragraph 3.8 in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

- 3.10 Notwithstanding paragraph 3.8, it is expressly agreed that the parties may by agreement rescind or vary this 0 or any term of this 0 without the consent of any other person who has the right to enforce the terms of this 0 or the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.
- 3.11 In the event of a Service Transfer to which the Employment Regulations do not apply, the following provisions shall apply:
- 3.11.1 the Council or the Replacement Contractor can, at its discretion, make to any of the employees listed on the Contractor's Provisional Staff List or any Contractor's Personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;
 - 3.11.2 when the offer has been made by the Council or Replacement Contractor and accepted by any employee or worker, the Contractor shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Contractor which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
 - 3.11.3 if the employee does not accept an offer of employment made by the Council or Replacement Contractor, the employee shall remain employed by the Contractor and all claims in relation to the employee shall remain with the Contractor; and
 - 3.11.4 if the Council or the Replacement Contractor does not make an offer to any employee on the Contractor's Provisional Staff List or any Contractor's Personnel, then that employee and all claims in relation to that employee remains with the Contractor.