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Epping Forest District Council

**CONTRACT FOR THE PROVISION OF WASTE AND RECYCLING COLLECTION,
STREET CLEANSING, GROUNDS MAINTENANCE AND FLEET SERVICES**

Section 2 – Conditions of Contract
(ISOS Final Draft)

DATED

2014

EPPING FOREST DISTRICT COUNCIL

- and -

[CONTRACTOR]

**CONTRACT FOR THE PROVISION OF WASTE AND RECYCLING COLLECTION,
STREET CLEANSING, GROUNDS MAINTENANCE AND FLEET SERVICES**

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THIS CONTRACT is made on the _____ day of _____ 2014

PARTIES:

On the one part,

EPPING FOREST DISTRICT COUNCIL whose principal office is situated at Civic Offices, High Street, Epping Essex CM16 4BZ ("Council"),

And on the other,

[CONTRACTOR], a company registered in [] with registered number [] and whose principal place of business is at [] ("Contractor").

BACKGROUND:

- (A) The Council is a waste collection authority in its administrative areas for the purposes of Sections 45 and 55 of the Environmental Protection Act 1990.
- (B) The Council has procured a contract for the provision of waste and recycling collection, street cleansing, grounds maintenance and fleet services (the "Services") and this Contract sets out the terms and conditions under which the Contractor will provide the Services.

AGREED TERMS:

SECTION 1 - PRELIMINARY

1. Definitions and Interpretation

1.1 In this Contract, the following expressions shall have the following meanings:

"Alternate Weekly Collection" shall mean a collection service carried out at a frequency of once every other week so that e.g. Household Residual Waste and Household Recyclable Waste are collected on alternate weeks but on the same day.

"Applicable Laws" shall mean the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services including, without limitation, the Environmental Protection Act 1990, the Controlled Waste Regulations 2012, the Public Health Act 2006, the Clean Neighbourhood and Environment Act 2005, the Control of Pollution Act 1974

and the Health and Safety at Work etc. Act 1974;

"Assisted Collections"	shall mean those collections where the Contractor is required to collect the waste Container from the Stance instead of from the Collection Point and, in the case of Wheeled Bins and boxes etc., return these to the Stance.
"Assets"	all equipment, containers, materials, vehicles and signage necessary for the proper performance of the Services during the Contract Period and used exclusively for the performance of the Services;
"Authorised Officer"	the officer designated by the Council as responsible for supervising this Contract, whose responsibilities are more specifically detailed in Clause 7 (Contract Manager and Authorised Officer) and Schedule 3 (Officers);
"Bills of Quantities"	[the priced unit of work related to a fixed or indicative quantity; the tendered price relates to that quantity subject to price variations [as detailed in the Tender documents];
"Bring Site"	shall mean a defined site where large recycling Containers are located for use by the general public.
"Business Day"	shall mean a day (other than a Saturday or a Sunday) on which banks are open for domestic business in the City of London;
"Collection Point"	shall mean the point from which the Contractor shall collect all Household Waste, contained in a Receptacle; and the point to which the Contractor shall return an emptied Wheeled Bin or other Container.
"Commercial Waste"	shall mean any wastes that are defined within the meaning of the definition of Commercial Waste under the Environmental Protection Act 1990 Sections 75(2), 75 (7) and 75 (8) and the

Controlled Waste Regulations 2012.

"Compensation Sum"	the amount of compensation payable by the Council to the Contractor, as more particularly detailed in Schedule 8 (Compensation on Termination);
"Confidential Information"	all know-how and other information whether commercial, financial, technical or otherwise relating to the business, affairs or methods of the Council, which is contained in or discernible in any form whatsoever (including without limitation software, data, drawings, films, documents and computer-readable media) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is clearly so from its content or the context of disclosure;
"Consumer Price Index" or "CPI"	is the official measure of inflation of consumer prices of the United Kingdom. It is also called the Harmonised Index of Consumer Prices (HICP).
"Container" or "Receptacle"	shall mean any Wheeled Bin, box, Household Refuse Sack or other type of Container approved by the Authorised Officer for holding Household Waste.
"Contract"	this written Contract, including the Schedules and any documents referred to in and/or attached hereto;
"Contract Manager"	the person appointed by the Contractor to manage the delivery of the Services in accordance with the terms of this Contract, whose responsibilities are more specifically detailed in Clause 7 (Contract Manager and Authorised Officer) and Schedule 3 (Officers);
"Contract Period"	the Initial Period, together with the Extension Period, if applicable;
"Contract Price"	the payment due to the Contractor for the provision of the Services;

"Contract Year"	<p>a period of twelve (12) months commencing on each anniversary of the First Services Commencement Date, provided that :</p> <p>a) the first Contract Year shall be the period commencing on the Services Commencement Date and ending on the Sunday immediately following 3 November in the following year; and</p> <p>b) the final Contract Year shall be the period commencing on the Monday immediately following 3 November in the penultimate year and ending on the Sunday immediately following 3 November the following year;</p>
"Council"	Epping Forest District Council, and any successor authorities and any body to which all or part of the functions of this Council may lawfully be transferred;
"Co-mingled"	shall mean co-mingled dry recyclable materials collected from each domestic property in one Container.
"Damaged Wheeled Bin"	shall mean a Wheeled Bin damaged to such an extent, or for reasons of health and safety, that it is no longer considered by the Authorised Officer to be suitable for the purpose for which it was supplied.
"Data Protection Laws"	the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice)(Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issues by the Information Commissioner from time to time;

"Deductions"	the deductions payable by the Contractor to the Council for a Performance Failure in accordance with Clause 13 (Performance Monitoring and Deductions);
"Default Notice"	a written notice given by the Council to the Contractor pursuant to Clause 13 (Performance Monitoring and Deductions) giving details of the Contractor's Performance Failure;
"Delivery Point"	shall mean the waste transfer facility and/or waste disposal facility available for use under the provisions of the Essex County Council Waste Management Contract.
"Depots"	the premises provided by the Council to the Contractor under the Leases for the proper performance of the Services, as detailed in Clause 18 (Depots) and Schedule 4 (Depots);
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Clause 47 (Dispute Resolution Procedure);
"Effective Date"	the date of this Contract;
"EPA"	the Environmental Protection Act 1990;
"Estimated Costs"	the costs that are estimated to arise from a Variation
"Extension Period"	the contract period of seven (7) to ten (10) years commencing at the end of the Initial Period in accordance with Clause 2 (Commencement and Duration);
"First Services Commencement Date"	3 November 2014;
"Force Majeure Event"	without limitation, war, armed conflict, terrorism, riot, civil disorder, fire, explosion, lightning, natural flood, exceptionally adverse weather conditions, earthquakes, failure or shortage of power, fuel or transport, strike or lock-out (other than a strike or

lock-out which is limited to the Contractor), Acts of God or other event outside the affected party's reasonable control, provided the same arises without the fault or negligence of the affected party, which affects the performance by that party of its obligations under this Contract;

"Good Industry Practice"

the degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator engaged in the same type of undertaking as that of the Contractor under the same or similar circumstances at the relevant time for such exercise.

"Highway or Public Highway"

shall mean any carriageway, lane, bridle path, footway, footpath, cycle track, walkway, bridge, square, court, alley, passage, subway or other area which is a 'Highway maintainable at public expense' in accordance with the Highways Act 1980 (or any subsequent enactment) and includes the whole extent of the Public Highway and the carriageways.

"Household Organic Waste"

shall mean biodegradable green waste arising from within the garden or grounds of a domestic property plus food waste and excluding cardboard.

"Household Recyclable Waste"

as a minimum shall include cans and aerosols, paper, glass, card and cardboard, plastic bottles, mixed plastics, Tetrapak, batteries, books and catalogues, shredded paper, jar and bottle tops. The Authorised Officer reserves the right to change this list on giving notice to the Contractor.

"Household Residual Waste"

shall mean Household Waste excluding Household Organic Waste and Household Recyclable Waste.

"Household Refuse Sack"

shall mean a plastic sack used or provided to contain Household Waste.

"Household Waste"	shall mean Household Waste as defined in Section 75(5) EPA and the Controlled Waste Regulations 2012;
"Informed in Writing"	shall mean a notification slip, the design of which is approved by the Authorised Officer, that is provided to relevant householders by the Contractor.
"Initial Period"	a period of seven (7) to ten (10) years from the First Services Commencement Date;
"Intellectual Property"	any and all patents, trade marks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them;
"Leases"	the leases relating to the Depots to be granted by the Council to the Contractor in accordance with Clause 18 (Depots), details of which are provided in Schedule 4 (Depots);
"Maximum Intensity"	shall mean the locations where the standards described for High Intensity areas in the Environmental Protection Act Code of Practice for Litter and Refuse are required each day.
"Missed Collection"	shall mean any report by a resident where a collection has not taken place or where the resident was not Informed in Writing of a change in the arrangements; or any collection which is known by the Authorised Officer not to have taken place on the Prescribed Day.
"Material"	all data, text, graphics, images and other materials and/or documents created, used or supplied by the Council in connection with this Contract;
"Necessary Consents"	all approvals, authorisations, licences, consents, permissions, permits and

	certificates required for the proper performance of the Services under this Contract;
"New Contractor"	any organisation contracted to provide services to the Council that are the same or substantially similar to the Services following the expiry of termination of this Contract;
"Outgoing Providers"	the organisations with whom the Council initially contracted for the provision of the Services and who will be replaced by the Contractor;
"Performance Standards"	the performance standards to which the Contractor shall perform in respect of the Services, as detailed in the Specification.
"Personnel"	the persons employed, engaged or used by the Contractor for the provision of the Services, including the Transferring Employees;
"Premises"	all premises (other than the Depots) necessary for the proper performance of the Services during the Contract Period;
"Prescribed Day"	shall mean the day of the week on which collections would normally take place.
"Prohibited Act"	<p>offering, giving or agreeing to give to any person any gift or consideration of any kind as inducement or reward for: (i) doing or nor doing any act in relation to the obtaining or performance of this Contract or any other contract with the Council (even if the Contractor does not know what has been done), or (ii) showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Council;</p> <p>a) committing any fraud in connection with this or any other contract with the Council, whether alone or in conjunction with members of the Council, its employees or contractors;</p>

	b) committing any offence under the Bribery Act 2010 or section 117(2) of the Local Government Act 1972;
"Quality Management System"	the approved quality management system whose object is to ensure that the Services meet the requirements of the Specification, in accordance with the provisions of Clause 6 (Quality Assurance);
"Rectification Notice"	a written notice given by the Council to the Contractor pursuant to Clause 13 (Performance Monitoring and Deductions) initiating the process to remedy a Performance Failure;
"Recycling"	shall mean the collection, storage and/or sorting and/or processing or reprocessing of waste with a view to its re-use.
"Recycling Container"	shall mean a Container that is used for storing household Recycling materials between collection times.
"Review Date"	the date on which the Contract Price will be reviewed in accordance with Clause 22 (Contract Price). The first Review Date shall be on the first anniversary of the First Services Commencement Date and thereafter on each subsequent anniversary of that date;
"Routine Services Programme"	shall mean the organised programme of collection, cleansing and other maintenance work activities required to deliver the Services.
"Services Commencement Date"	the date on which the Contractor will start to provide the Services and which shall be 3 November 2014.
"Service Transfer"	the transfer of the Services from the Contractor to the New Contractor or to the Council;
"Services"	the provision by the Contractor of waste and recycling collection, street cleansing, grounds maintenance and fleet services

for the Council under this Contract, as more particularly described in Schedule 1 (Service Specification).

"Side Waste"	shall mean all or any Waste which is placed for collection at the side of or on top of, but outside, the normal Container. In the case of plastic sack collections the determination of Side Waste shall be identified in the Specification separately.
"Specification"	the Specification for the Services attached at Schedule 1 (Service Specification);
"Spilled Waste" or "Spillage"	shall mean any waste placed for collection which has been displaced from its original Receptacle other than into a collection vehicle howsoever the Spillage is caused.
"Staff"	the persons including the Transferring Employees and any temporary, agency or sub-contractors who are employed, engaged or used by the Contractor for the provision of the Services
"Stance"	shall mean the external location where the Containers are normally located by the occupier of the household prior to collection.
"Tenderers"	means the organisations bidding for this Contract;
"Termination Date"	the date of expiry or early termination of this Contract in accordance with its terms;
"Transferring Employees"	<ul style="list-style-type: none"> a) those employees of the Council whose contract of employment will be transferred to the Contractor pursuant to TUPE; and b) those employees of the Council who have in the past been employed by their respective Council and who, as a result of the application of TUPE in relation to what was done for the purposes of carrying out the contract between

the Council and the relevant Outgoing Provider, became employees of someone other than the Council, together with those employees of the Outgoing Providers who were employed to work alongside those Council employees, whose contract of employment will be transferred to the Contractor pursuant to TUPE;

"TUPE"	the Transfer of Undertaking (Protection of Employment) Regulations 2006, as may be amended from time to time;
"Variation"	any variation to this Contract, including to the Services, as detailed in Clauses 15 and 16;
"Variation Procedure"	the procedure for implementing variations to this Contract, as set out in Clauses 15 and 16;
"Weekly Collection"	shall mean a Collection Service carried out at a frequency of once every week on the same day with no more than 7 days between each occurrence.

- 1.2 Clause and Schedule headings are purely for ease of reference and do not form part of or affect the interpretation of this Contract.
- 1.3 Where the context so admits or requires, words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- 1.4 References to Clauses and Schedules are, unless otherwise provided, reference to the Clauses and Schedules to this Contract.
- 1.5 Any phrase introduced by the words "including", "includes", "in particular" or similar shall be construed without limitation by the related general words.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 In the event of any inconsistency between the Clauses of this Contract and the Schedules, the latter shall prevail to the extent of the inconsistency.
- 1.8 Unless a right or remedy is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights or remedies.

2. Commencement and Duration

- 2.1. This Contract shall take place on and from the Effective Date and shall continue in full force and effect for the Initial Period unless terminated early in accordance with its terms.
- 2.2. If the Council wishes to extend this Contract beyond the expiry of the Initial Period, the Authorised Officer shall give the Contractor at least twelve (12) months' written notice of such intention prior to the expiry of the Initial Period, in which case this Contract shall be extended for the Extension Period.
- 2.3. If the Council does not wish to extend this Contract beyond the Initial Period or the parties cannot agree the terms of such extension, this Contract shall expire on the expiry of the Initial Period. After such expiry, the Contractor shall still be obliged to assist the Council to effect a smooth Service Transfer in accordance with the provisions of Clause 38 (Exit and Service Transfer).

3. Bond or Guarantee

- 3.1. On or prior to the Services Commencement Date the Contractor shall provide:
 - a. a performance bond with a reputable surety within the European Union in the sum of £1 million, such bond to be in a form acceptable to the Council and to remain in place during the Contract Period; or
 - b. at the Council's discretion, a parent company guarantee from its parent company (as defined in Part 38, section 1173 of the Companies Act 2006).

SECTION 2 - SERVICES

4. Services

- 4.1. The Council shall appoint the Contractor to provide, and the Contractor shall provide, the Services to the Council from the Services Commencement Date, pursuant to the terms and conditions of this Contract.
- 4.2. In providing the Services, the Contractor shall at all times:
 - a) apply such time, resources, trained personnel and skill as may be necessary for the due and proper performance of the Services;
 - b) meet the requirements of the Specification, including the Performance Standards;
 - c) obtain and comply with the Necessary Consents;
 - d) provide the Services in accordance with Good Industry Practice;
 - e) comply with the Quality Management System;

- f) comply with all Applicable Laws; and
 - g) comply with all lawful and reasonable directions regarding the Services communicated to it from time to time by the Council.
- 4.3. The Contractor shall have regard to the Council's Best Value duty in relation to the Services under Part 1 of the Local Government Act 1999 and shall use its best endeavours, during the Contract Period, to 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.

5. Due Diligence

5.1 The Contractor acknowledges and confirms that:

- a) it has had an opportunity to carry out its own due diligence exercise in relation to the Specification and has discussed with the Council all the matters it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this Contract;
 - b) it has satisfied itself as to the Assets and Depots to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract;
 - c) it has received all the information requested by it from the Council pursuant to Clause 4.2(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;
 - d) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to Clause 4.2(c);
 - e) it has entered into this Contract in reliance on its own due diligence.
- 5.2 Save as otherwise provided in this Contract, no representations, warranties or undertakings shall be taken to have been made or implied from anything said or written in negotiations between the parties prior to the Effective Date, except as expressly stated in this Contract. The Contractor acknowledges and agrees that it has not relied upon any information given or representation made by or on behalf of the Council in entering into this Contract.
- 5.3 The Contractor shall promptly notify the Council in writing if it becomes aware during the performance of this Contract of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or to meet the requirements of the Specification.
- 5.4 The Contractor shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result

of, any matters or inaccuracies notified to the Council by the Contractor in accordance with Clause 5.3, save where such additional costs or adverse effect on performance have been caused by the Contractor having been provided with fundamentally misleading information by or on behalf of the Council and the Contractor could not have reasonably known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Contractor shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Variation Procedure.

5.5 Nothing in this Clause 5 shall exclude or limit the liability of the Council for fraud or fraudulent misrepresentation.

6. **Quality Assurance**

6.1 The Contractor shall, during the Contract Period, develop and maintain a Quality Management System and shall, at the Council's reasonable request, review, amend and/or update the Quality Management System.

6.2 The Contractor shall ensure that all aspects of the Services are conducted in accordance with the requirements of the Quality Management System.

6.3 The Contractor shall appoint (or shall procure the appointment) as soon as reasonably practicable following the Effective Date, a quality manager who may be directly involved in the day-to-day performance of the Services.

6.4 The Council may carry out periodic audits of the Quality Management System at approximate intervals of six (6) months. The Contractor shall ensure that the Council shall have a like right in respect of any relevant sub-contractors. The Contractor shall co-operate and shall procure that any relevant sub-contractor co-operates with the Council including providing it with all information and documentation which it reasonably requires in connection with this Clause 6.

7. **Contract Manager and Authorised Officer**

7.1 The Contractor shall appoint a Contract Manager and the Council shall appoint an Authorised Officer, who shall each be responsible for matters allocated to them under this Contract and who shall be the principal point of contact for their respective parties. All communications, documentation, notices and materials relating to this Contract and sent or provided to either party shall be marked for the attention of the Contract Manager or the Authorised Officer, as applicable.

7.2 The Contract Manager and the Authorised Officer shall have the authority to act on behalf of their respective parties on the matters for which they are expressed to be responsible. Without limitation, they shall be responsible for:

- a) co-ordinating the performance of the Services, including the overseeing the conduct and quality thereof;
- b) arranging and attending (personally or by representative) progress and review meetings as described in Clause 12 (Review Meetings); and

- c) using reasonable endeavours to resolve issues arising under this Contract save that they shall refer all disputes which are outside their ordinary authority to resolve to appropriate members of their senior management in accordance with the provisions of Clause 47 (Dispute Resolution Procedure).
- 7.3 Each party shall ensure that the role of its Contract Manager or Authorised Officer is not vacant (in terms of a permanent representative) for more than ninety (90) Business Days. Any replacement shall be suitably qualified and fully competent to carry out the tasks assigned to the Contract Manager or Authorised Officer whom he/she has replaced. A temporary replacement shall be identified as soon as practicable from the Contractor or the Council becoming aware of the role becoming vacant.
- 7.4 The Contractor shall notify the Council of the identity, qualifications and experience of its Contract Manager.
- 7.5 The Council may request in writing that the Contractor removes, or procures the removal of, its Contract Manager whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities. The Contractor shall promptly consider the request in a manner which is consistent with the Contractor's employment policies and procedures. The replacement of the Contractor's Contract Manager pursuant to this Clause 7.5 shall be at the Contractor's sole expense.
- 8. Health and Safety**
- 8.1 The Contractor shall ensure that he shall in the course of this Contract comply with the Health and Safety at Work etc. Act 1974, (HSWA), which term shall include all Regulations, Orders, Codes of Guidance and any other supplemental Legislation, Circulars or Guidance made or issued pursuant thereto and any statutory modification or re-enactment thereof together with any Code of Guidance prepared by the Council and supplied to the Contractor either before or during this Contract and that all persons who are at work, (as defined in that act), in connection with this Contract shall comply at all times with HSWA.
- 8.2 If at any time any authorised officer of the Council considers that a breach of Health and Safety Legislation exists, that officer shall:
- a) Instruct the Contractor to cease to carry out the Services (or a specified part thereof) either immediately or within a specified period or not later than a specified date or time.
- b) Instruct the Contractor
- (i) to take specified steps to secure compliance with HSWA;
- or

(ii) to comply with advice or requirements of the Health and Safety Executive or a proper officer thereof.

8.3 The Contractor shall inform the Council forthwith upon complying with any such instructions and shall not recommence until instructed to do so in writing.

8.4 The Contractor shall not be entitled to any payment either for services not carried out whilst complying with an instruction nor for any additional costs incurred resulting from compliance to such instruction.

8.5 The Contractor shall ensure that suitable financial provision for health and safety is made in order to facilitate any requirement changes, which may result from changes of legislation.

9. Necessary Consents

9.1. The Contractor shall:

a) at its own expense, obtain and maintain all Necessary Consents which may be required for the performance of the Services and shall use reasonable endeavours to ensure that the Council shall not incur any additional costs associated with obtaining or maintaining the same;

b) procure that no Necessary Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Necessary Consent is revoked and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Services; and

c) not do or permit anything to be done which might cause or otherwise result in a breach by any of the Council of any Necessary Consents.

9.2. The Contractor shall, within forty-eight (48) hours of becoming aware of the same, notify the Authorised Officer of any actions, claims or proceedings which may be threatened or pending and which may lead to any Necessary Consent being revoked or not renewed.

SECTION 3 - WARRANTIES AND UNDERTAKINGS

10. General Warranties

10.1 The Council and the Contractor warrant, represent and undertake that:

a) it has full capacity and authority to enter into and to perform this Contract, and that its entry into and performance of this Contract will not cause it to be in breach of any obligations to a third party;

b) this Contract is executed and sealed by a duly authorised representative of that party;

- c) there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Contract; and
- d) that it has not committed any Prohibited Act in entering into this Contract.

11. Contractor Warranties

11.1 The Contractor warrants that:

- a) the Services will be carried out in a competent and professional manner and with all reasonable skill and care in accordance with the Specification and Good Industry Practice;
- b) the Personnel who perform the Services under this Contract are and shall be competent and suitable in every respect, whether as to qualifications, experience or otherwise, to provide the Services;
- c) it will perform and procure the performance of its obligations under this Contract in compliance with all Applicable Laws;
- d) it has, and will continue to hold, all Necessary Consents required to provide the Services; and
- e) all information and materials, including, without limitation, information relating to the Contractor's financial position, provided by it to the Council in connection with this Contract and the procurement of the same and/or otherwise relevant to the provision of the Services is accurate in all material respects and that it is entitled to provide the information to the Council for use as contemplated hereunder without recourse to any third party.

SECTION 4 - MONITORING AND PERFORMANCE

12. Progress and Review Meetings

12.1 The parties shall arrange and attend progress and review meetings at regularly scheduled intervals to be agreed between the parties from time to time. Such meetings shall be the forum for the parties to review the status and progress of the Services and to discuss developments, consider proposals, agree actions and seek to resolve any issues arising, with a view to improving and enhancing the performance of the Services. Where appropriate, other personnel or representatives of the parties designated or approved by them shall also attend progress and review meetings.

12.2 The terms of this Clause 12 shall operate without limitation to any other provision of this Contract which provides for or contemplates review or resolution by the parties of any aspect or any matter under this Contract, and any such review may be carried out by the parties at the progress and review

meetings described in this Clause 12 or otherwise at such times as the parties may agree from time to time.

- 12.3 The Council envisages the Contract to run on the basis of a partnering arrangement: and would wish to develop a Partnership Board for the Contract with regular meetings.

13. Performance Monitoring and Deductions

- 13.1 The Contractor shall ensure that the Services meet or exceed the Performance Standards at all times.

- 13.2 The Contractor shall monitor its performance in the delivery of the Services in accordance with the Performance Standards and shall provide the Council with a monthly report detailing its performance.

- 13.3 The Council may elect, at its own cost, to undertake their own performance monitoring at any stage during the Contract Period for any purpose, including in order to ensure that the Services are being provided in accordance with the Performance Standards and this Contract generally. The Contractor shall use its reasonable endeavours to assist the Council in such an exercise. The Council may notify the Contractor of the outcome of the performance monitoring exercise, and the Contractor shall have due regard to the Council's comments in relation to the future provision of the Services.

- 13.4 Where required by the Authorised Officer the Contractor shall respond to any Rectification Notice or Default Notice in writing within 2 Business Days of such request by the Authorised Officer, setting out proposals for remedial action and correction to ensure that the failure shall not reoccur.

- 13.5 If at any time, other than within the first three (3) calendar months from the Services Commencement Date or such other period as agreed by the Authorised Officer, the Contractor fails to perform the Services in accordance with the Specification (including the Performance Standards) (the "Performance Failure"), then the Authorised Officer may issue (without prejudice to other rights or remedies available to the Council under this Contract) to the Contractor a Rectification Notice in accordance with this Clause 13 or may advise the Contractor verbally of any works which may become the subject of a Rectification Notice. Where a Performance Failure cannot be rectified, this shall be regarded as a Non-Rectifiable Default and the Default Notice procedure will apply at the outset.

Rectification Notices

- 13.6 Where the Authorised Officer is satisfied that the Contractor has committed a Performance Failure, he/she will be entitled to issue to the Contractor a Rectification Notice giving details of the failure and requiring the Contractor to remedy such failure within a specified period of time.

- 13.7 A Rectification Notice will contain the following details:

- a) be pre-numbered, dated and authorised by the Authorised Officer;
- b) where applicable, the exact location of the site where the Performance Failure occurred;
- c) the date and time at which the Performance Failure was found to exist;
- d) a description of the Performance Failure required to be remedied;
- e) a description of the action required to remedy the Performance Failure and where applicable the methodology to be used; and
- f) the period of time (which shall be reasonable in all the circumstances) being allowed to remedy the Performance Failure as stipulated by the Authorised Officer,

and will include a space for the Contractor to advise that the rectification work has been completed and the time and date on which the work was completed which when completed is to be authorised and dated by the Contractor and returned to the Authorised Officer.

13.8 The period allowed in which to remedy the Performance Failure will commence upon receipt by the Contractor of the Rectification Notice and the Contractor will carry out all such rectification works are necessary to effectively remedy the Performance Failure detailed on every Rectification Notice, within the specified period.

13.9 If the Contractor remedies the Performance Failure within the specified period allowed then it shall be entitled to receive full payment for that part of the Services without deduction, save for the Deductions applicable in accordance with Clause 13.14 below.

13.10 Examples of Performance Failures which would result in a Rectification Notice include, but are not limited to:

- Failure to empty the contents of a Container or bin by the appropriate mechanism;
- Incorrect emptying of a Container or bin;
- Failure to return Containers to the appropriate point;
- Failure to collect Waste or any materials as directed by the Council from any location as specified or on the scheduled day;
- Failure to collect Bulky Household waste within five Business Days or at the agreed time and date of an appointment;
- Spillages of Waste not promptly cleared up;
- Failure to supply following request, replace or repair any Container or bin within two Business Days;
- Failure to respond within the required timescales in relation to complaints, including in relation to insurance claims;
- Failure to maintain cleanliness to the standards of the Specification including failure to leave sufficient capacity in bins;

- Failure to undertake any of the Services in accordance with the agreed methods and / or to the required standards;
- Failure to develop and / or produce relevant and agreed management information within the required timescale; and
- Failure to respond within the required timescale to any reasonable instruction by the Authorised Officer.

Default Notices

13.11 Where a Performance Failure cannot be rectified (the "Non-Rectifiable Default") or where after the issue of a Rectification Notice the Contractor fails to remedy the Performance Failure within the specified period, the Authorised Officer will be entitled to issue to the Contractor a Default Notice giving details of the Performance Failure and, if appropriate, requiring the Contractor to remedy such Performance Failure within a specified period of time. Examples of situations that would be interpreted as a Non-Rectifiable default include, but shall not be limited to:

- a) breaches of health and safety;
- b) omission of tasks that are required at a certain specific time;
- c) failure in respect of customer care; and
- d) any criminal activity.

13.12 The Default Notice will contain the following details:

- a) be pre-numbered, dated and authorised by the Authorised Officer;
- b) the date and reference number of the relevant Rectification Notice if applicable; and
- c) the period of time being allowed to remedy the Performance Failure, taking into account the period of time already allowed in any Rectification Notice (which period of time shall be reasonable in all the circumstances), after which a second Default Notice can be issued.

13.13 The period allowed in which to remedy the Performance Failure will commence on receipt by the Contractor of the Default Notice and the Contractor shall carry out whatever works are necessary to remedy the Performance Failure on every Default Notice within the specified period.

Deductions

13.14 If the Contractor remedies the Performance Failure within the specified period allowed then it shall be entitled to receive full payment for that part of the Services, save for the Deductions applicable in accordance with Clause 13.15 for each Rectification Notice or Default Notice issued within the particular payment period. Deductions shall also apply where the general performance standards of street cleansing under the Specification are not met. Any

additional reasonable costs incurred by the Council as a result of a Performance Failure shall be notified by the Authorised Officer to the Contractor and paid by the Contractor to the Council.

13.15 The Council shall have the right to recover from the Contractor the Deductions, as follows:

- a) Non-Rectifiable Default of a minor nature (all services): £100
- b) Non-Rectifiable Default of a major nature (all services) : £1,000
- c) Rectification Notices:
 - i. 0-30 Notices in 1 week or 0-100 Notices in any consecutive four-week period: No penalty
 - ii. 31-100 Notices in 1 week or 101-300 Notices in any consecutive four-week period: £5 per Notice
 - iii. 101-199 Notices in 1 week or 301 to 600 Notices in any consecutive four-week period: £10 per Notice
 - iv. 200 or more Notices in 1 week or 601 or more Notices in any consecutive four-week period: £20 per Notice
- d) Default Notice following a Rectification Notice or repeat Default Notice within 6 weeks:
 - i. 1 - 10 Notices in 1 week or 30-40 Notices in any consecutive four-week period: £5 per Notice
 - ii. 11 - 19 Notices in 1 week or 41-59 Notices in any consecutive four-week period: £10 per Notice
 - iii. 20 or more Notices in 1 week or 60 or more Notices in any consecutive four-week period: £20 per Notice

In each case, the Rectification or Default Notice shall be deemed to arise in the week in which the act/omission resulting in the Rectification or Default Notice occurred; and a week is measured from Monday to Sunday.

- e) Street cleansing overall performance:

Deductions shall be based on the inspections (inspections carried out four times per year), using the general methodology of the former National Indicator 195, and £2,500 will be deducted per percentage point for Litter and for Detritus for performance below the following standards in any two consecutive inspections:

- i. Litter: 7%
- ii. Detritus: 9%

13.16 Where Deductions total more than 1% of the monthly Contract Price in two (2) consecutive months, or in any three (3) months in a six (6) month period, the

Authorised Officer may seek termination of this Contract on the basis of poor performance.

13.17 In the event of non-performance of the Services by the Contractor, save for non-performance due to a Force Majeure Event, the Contractor shall pay or allow to be paid to the Council liquidated damages at the rate of £50,000 per day.

13.18 The Contractor acknowledges that the sums set out above as liquidated damages represent a genuine and reasonable pre-estimate of the Council's loss arising from the Contractor's non-performance in question. The Council acknowledges that any liability of the Contractor to pay the Deductions/liquidated damages under this Clause 13 shall represent the Council's sole financial remedy in respect of any non-performance/failures, but shall be without prejudice to any other rights or remedies available to the Council under this Contract.

14. Reporting and Record-Keeping Obligations

14.1 The Contractor shall prepare and submit to the Authorised Officer all such activity and progress reports in relation to the Services as may be reasonably required by the Council from time to time in accordance with the terms of this Contract.

14.2 Without prejudice to Clause 14.1, the Contractor shall (and shall procure that any Sub-Contractor shall) keep and maintain detailed records relating to the delivery of the Services in accordance with the Specification, Good Industry Practice and any Applicable Laws including, without limitation:

- a) financial records in compliance with recognised accounting practices;
- b) records of all Performance Failures in accordance with the Services Specification;
- c) records of all incidents relating to Health & Safety and security which occur during the term of this Contract;
- d) records of information required in relation to Equal Opportunities legislation.

14.3 The Contractor shall permit all records referred to in this Clause 14 to be examined and copied by the Authorised Officer, the Council's auditors and their representatives and other representatives of the Council, as may be reasonably required from time to time during the Contract Period.

14.4 All records and information referred to in this Clause 14 shall be subject to the provisions of Clause 31 (Confidential Information) and Clause 33 (Freedom of Information).

14.5 In the event of a Service Transfer, the Contractor shall (and shall procure that any Sub-Contractors shall) comply with all reasonable requests of the

Authorised Officer to provide to the New Contractor such records as referred to in Clause 14.2(a).

14.6 The Contractor shall retain all records for a period of twelve (12) years following the termination or expiry of this Contract or as otherwise required by any Applicable Laws.

15. Council's Variation to the Services

15.1 The Council has the right to propose changes to the Services in accordance with the Variation Procedure in this Clause 15. The Council shall not propose a change to the Services which:

- a) would cause any Necessary Consents to be revoked (or a new consent required to implement the relevant change to the Services to be unobtainable);
- b) requires the Services to be performed in a way that infringes any Applicable Laws or is inconsistent with Good Industry Practice;
- c) would (if implemented) materially and adversely change the nature of the Services;
- d) the Council does not have the legal power or capacity to require the implementation of; or
- e) would require the Contractor to implement the variation in an unreasonable period of time.

15.2 If the Council requires a variation to the Services, the Council shall serve a notice of variation on the Contractor ("Council Variation Notice"). The Council Variation Notice shall set out the variations required in sufficient detail to enable the Contractor to provide the estimated change in costs (the "Estimate").

15.3 As soon as practicable after receiving the Council Variation Notice, and in any event within ten (10) Business Days thereafter, the Contractor shall provide to the Contractor the Estimate. The Estimate shall include details of:

- a) the Estimated Costs of the change, including any change to the Contract Price;
- b) any capital expenditure required, including a statement as to how such capital expenditure will be funded;
- c) the timetable for implementation;
- d) the likely impact on the provision of the Services;
- e) the impact on and changes necessary to the terms of this Contract; and
- f) any amendments to the Necessary Consents or whether additional Necessary Consents are required.

- 15.4 As soon as practicable after the Council receives the Estimate, the Council and the Contractor shall discuss and agree the issues set out in the Estimate, including:
- a) providing evidence that the Contractor has used all reasonable endeavours (including, where practicable, the use of competitive quotes) to minimise any increase in costs and maximise any reduction in costs; and
 - b) demonstrating that any expenditure that has been avoided and which was anticipated to be incurred to maintain or replace assets that have been affected by the Variation has been taken into account in the Estimated Costs of the change.
- 15.5 If the Contractor does not intend to use its own resources to implement any change it shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money when procuring any work, services, supplies, materials or equipment required in relation to the Variation.
- 15.6 Any dispute between the parties in relation to any changes proposed by the Variation Estimate shall be determined in accordance with Clause 47 (Dispute Resolution Procedure).
- 15.7 As soon as practicable after the contents of the Estimate have been agreed or determined pursuant to Clause 47 (Dispute Resolution Procedure), the Council shall:
- a) confirm the Estimate (as modified) in writing; or
 - b) withdraw the Council Variation Notice.
- 15.8 If an Estimate identifies a reduction in the Contractor's or any Sub-Contractor's costs in providing the Services, the Contract Price shall be adjusted downwards to reflect an equal sharing of such costs savings as between the Contractor and the Council.
- 16. Contractor's Variation to the Services**
- 16.1 If the Contractor wishes to introduce a variation to the Services, it shall serve a notice on the Council ("Contractor Variation Notice").
- 16.2 The Contractor Variation Notice must:
- a) set out the proposed variation to the Services in sufficient detail to enable the Council to evaluate it in full;
 - b) specify the Contractor's reasons for proposing the variations to the Services;
 - c) request the Council to consult with the Contractor with a view to deciding whether to agree to the variation to the Services and, if so, what consequential changes the Council requires as a result;

- d) indicate any implications of the variation to the Services;
 - e) indicate whether a variation to the Contract Price is proposed and, if so, provide a detailed estimate of the proposed change; and
 - f) set out the timetable for implementing the proposed variation to the Services.
- 16.3 The Council shall evaluate the Contractor's proposed variation to the Services, taking into account all the relevant issues, including whether:
- a) a change to the Contract Price will occur;
 - b) the variation affects the quality of the Services or the likelihood of successful delivery of the Services;
 - c) the financial strength of the Contractor is sufficient to enable it to perform the Services as varied; or
 - d) the variation materially affects the risks or costs to which the Council is exposed.
- 16.4 As soon as practicable after receiving the Contractor Variation Notice, the Council and the Contractor shall meet and discuss the matters referred to in it. The Council may propose modifications or accept or reject the Contractor Variation Notice.
- 16.5 If the Council accepts the Contractor Variation Notice, the relevant variation to the Services shall be implemented within the timetable set out in the Contractor Variation Notice as accepted.
- 16.6 If the Council rejects the Contractor Variation Notice (which it may do in its absolute discretion, except where Clause 16.8 applies) the Council shall notify the Contractor accordingly.
- 16.7 A Contractor Variation Notice shall not result in an increase to the Contract Price unless the Council's acceptance specifically agrees to the increase. If the variation to the Services causes or will cause the Contractor's costs to decrease, there shall be a correspondent decrease in the Contract Price.
- 16.8 The Council shall not reject a Contractor Variation Notice which is required in order to conform to a Change in Law.
17. **Step-In**
- 17.1 The Council shall be entitled to exercise its right of step-in in accordance with this Clause 17 if it reasonably believes that action is required in connection with the provision of the Services:
- a) to discharge a statutory duty;

- b) to address a serious risk which exists to the health and safety of persons or property or to the environment that the Contractor is unable or is expressly unwilling to remedy; or
 - c) to deal with an emergency that has arisen.
- 17.2 If the Council wishes to exercise their right of step-in, the Authorised Officer shall provide to the Contractor notice in writing specifying:
- a) the action the Council wish to take;
 - b) the reason for such action;
 - c) the date the Council wishes to commence such action;
 - d) the time period which the Council believes will be necessary for such action; and
 - e) to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken.
- 17.3 Following service of notice in accordance with Clause 17.2, the Council shall take such action as notified together with any additional action as it reasonably believes is necessary (the "Required Action") and the Contractor shall provide to the Council all such assistance as reasonably requested by the Council in taking the Required Action. The Council shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.
- 17.4 The Council shall undertake any Required Action in accordance with Good Industry Practice.
- 17.5 If the Required Action is taken as a result of a breach by the Contractor of its obligations under this Contract and the taking of such Required Action prevents the Contractor from providing any part of the Services then, for so long as and to the extent that the Required Action is taken:
- a) the Contractor shall be relieved of its obligations to provide that part of the Services as are affected; and
 - b) in respect of the period in which the Council is taking the Required Action, that part of the Contract Price due from the Council to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to Council's reasonable costs of operation in taking the Required Action.
- 17.6 Where the Council takes the Required Action but for a breach by the Contractor which prevents the Contractor from providing any part of the Services then, for so long as and to the extent that the Required Action is taken:

- a) the Contractor shall be relieved from its obligations to provide such part of the Services as are affected; and
- b) in respect of the period in which the Council is taking the Required Action and provided that the Contractor provides the Council with reasonable assistance (such assistance to be at the expense of the Council to the extent that incremental costs are incurred) that part of the Contract Price due from the Council to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

SECTION 5 - PREMISES AND ASSETS

18. Depots

- 18.1 The Depots will be made available to the Contractor in accordance with the Lease, which shall be entered into between the Contractor and the Council on the Effective Date.
- 18.2 The Contractor shall only be entitled to use and occupy the Depots in accordance with the terms of the Lease and, subject to the requirements of any Necessary Consents, shall use the Depots only for the purposes of providing the Services, unless otherwise agreed in writing by the relevant Council.
- 18.3 The Council shall be liable for all Environmental Liability arising from or in relation to any Depots, except to the extent such liability arises from any action, omission, default or negligence of the Contractor in carrying out any of its obligations under this Contract.
- 18.4 The Council shall undertake condition surveys of its Depots no later than two months following the Effective Date and no later than one month following the Termination Date. The costs of the condition surveys shall be borne equally between the Council and the Contractor.
- 18.5 The Lease for the current depot is only available for a limited period. Arrangements for new depot(s) are to be agreed: but shall automatically cease and determine with effect from the Termination Date. Transfer of the Depots back to the Council shall be dealt with in accordance with the yielding up provisions of the Leases.

19. Contractor Premises

- 19.1 Save in respect of any Depots to be made available by the Council, the Contractor shall be responsible for providing all Premises necessary in order to perform the Services in accordance with the terms of this Contract.
- 19.2 The Contractor shall:

- a) obtain and maintain the Necessary Consents to use the Premises for the purposes of providing the Services;
- b) ensure that the Premises are available for the Contract Period;
- c) be responsible for the payment of all fees, charges, rates and all other outgoings and expenses in relation to the Premises;
- d) operate, keep in good repair and maintain the Premises in accordance with all Applicable Laws and Good Industry Practice; and
- e) insure the Premises in accordance with the provisions of Clause 30 (Insurance).

20. Assets

- 20.1. If the Council does not elect to procure and fund the assets itself, the Contractor shall be responsible for providing all Assets as may be reasonably required for the proper performance of the Services.
- 20.2. If the Council does not elect to procure and fund the assets itself, all Assets used for providing the Services shall be owned or leased by the Contractor on terms which permit the Contractor to assign the benefit of such lease to the Council.
- 20.3. The Contractor shall, during the Contract Period:
 - a) operate, keep in good repair and maintain the Assets in accordance with Good Industry Practice;
 - b) insure the Assets in accordance with the terms of Clause 30 (Insurance); and
 - c) provide replacements when breakdowns occur or an Asset ceases to work effectively.
 - d) provide the Council on an annual basis by the 31st March the relevant details to allow the Council to account for the lease arrangements under International Financial Reporting Standards and in particular, IFRIC 4 and IAS 17. The information required will be:-
 - i) Description of each vehicle (incorporating make / model)
 - ii) Capital cost of each vehicle paid by the Contractor excluding VAT (not the list price)
 - iii) The lease payment frequency for each vehicle
 - iv) The start date of the lease for each vehicle
 - v) Confirmation of the lease period for each vehicle
 - vi) The lease payment per vehicle in sterling (excluding maintenance and VAT)
 - vii) The residual value assumed per vehicle (if any)

- 20.4. Not less than six (6) months prior to the expiry of the Contract Period, or in the case of early termination as soon as practicable thereafter, the Council shall notify the Contractor in writing indicating which, if any, Assets the Council require to be transferred to itself or the New Contractor for the purpose of continuing the provision of the Services or services the same as or similar to the Services.
- 20.5. Within thirty (30) days after receiving notice in accordance with Clause 20.4, the Contractor shall notify the Council in writing of the value being the current market value (exclusive of VAT) fixed by a valuer approved by both parties acting as expert and not as arbitrator (the "Value").
- 20.6. Following determination of the Value of the Assets, the Council shall confirm in writing which Assets are to transfer to it and the date of transfer. Subject to payment of the Value by the Council, the Contractor shall transfer the transferring Assets to the Council or the New Contractor (as determined by the Council).

21. Rights of Access

- 21.1 The Contractor shall permit the Council, by its duly authorised representatives, upon reasonable prior written notice to the Contractor (save in the event of an emergency when no notice shall be required), to visit any Premises where or from where the Services are being performed and meet with Personnel currently engaged in the provision of the Services, and shall comply with all reasonable requests by the Council during or as a result of such inspection, to enable the Council to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract.

SECTION 6 - FINANCIAL

22. Contract Price

- 22.1 In consideration of the Services to be provided by the Contractor, the Council shall pay to the Contractor the Contract Price in accordance with the terms of this Clause 22 and Schedule 2 (Pricing Schedule / Bills of Quantities). No additional charges shall be effective unless agreed by the parties in writing.
- 22.2 The Contract Price shall be fixed for the first Contract Year. In respect of the second and each subsequent Contract Year, the Contract Price shall be adjusted on each anniversary of the First Services Commencement Date, calculated as follows:

$$R = (Cx(A-B)/B)) + C$$

Where:

R = Reviewed Price

C = Contract Price at preceding Review Date or in the case of the first review, at the Services Commencement Date

A = Relevant Index Figure at April preceding Review Date

B = Relevant Index Figure at preceding Review Date or in the case of the first review, at the Services Commencement Date

- 22.3 For the purposes of Clause 22.2, the Relevant Index shall be Consumer Price Index (CPI).
- 22.4 Notwithstanding the provisions of this Clause 22, the Contract Price may be reviewed by agreement between the parties in accordance with Clauses 15 and 16 (Council's Variation to the Services and Contractor's Variation to the Services).
- 22.5 The Contractor shall submit to the Authorised Officer, no less than one (1) month of the end of each Contract Year, a full copy of its draft accounts relating to the Services. The Contractor shall provide to the Authorised Officer a certified copy of its accounts as soon as they are available.

23. **Charging and Invoicing**

- 23.1 The Contractor shall, at the end of each calendar month, submit to the Council an invoice in respect of the Services performed during that month.
- 23.2 Within thirty (30) days of receipt of the invoice, the Authorised Officer shall issue a certificate certifying the amount properly due and payable to the Contractor in accordance with this Contract and which shall take into account any adjustments made in accordance with Clause 24 (Ascertainment of Amounts due in Certificates). The Council shall pay to the Contractor such amount as is properly certified within thirty (30) days following receipt of the Contractor's invoice.
- 23.3 The Contract Price is payable exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Contractor shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for, or to pay, any VAT relating to payments made to the Contractor under this Contract.
- 23.4 If the Authorised Officer receives an invoice which he/she, acting in good faith, reasonably believes includes a sum which is not valid and properly due:
- a) the Authorised Officer shall notify the Contractor in writing as soon as reasonably practicable;
 - b) the Council's failure to pay the disputed sums shall not be deemed to be a breach of this Contract;
 - c) the Council shall pay the balance of the invoice which is not in dispute by the date its falls due;
 - d) to the extent that the Council is obliged, following resolution of the dispute, to pay an amount, then the Contractor may charge interest in

accordance with Clause 23.5 from the date it fell due until the date of payment;

- e) to the extent that the Contractor is obliged to refund an amount to the Council, interest shall be added to that amount in accordance with Clause 23.5; and
 - f) once the dispute has been resolved, where either party is required to make a balancing payment, it shall do so within thirty (30) days.
- 23.5 If either party fails to make any payment due to the other under this Contract on the date it falls due, the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the base rate of the Bank of England. Such interest shall accrue on a daily basis from the date it becomes due until the date of actual payment.
- 23.6 The Contractor shall not suspend provision of the Services if any payment is overdue.
- 23.7 The Council may, without prejudice to any other right or remedy that may be available to it, retain or set-off any sums owed to it by the Contractor which have fallen due and payable against any sums due to the Contractor under this Contract, or any other contract pursuant to which the Contractor or any associated company of the Contractor provides goods or services to the Council.

24. **Ascertainment of Amounts Due in Certificates**

- 24.1 The amount stated as being due in a certificate issued by the Authorised Officer in Clause 23.2 shall be the value of the work forming part of the Services which has been provided by the Contractor, measured and valued in accordance with Schedule 2 (Pricing Schedule / Bills of Quantities) and adjusted by the following
- a) less any previous payments made to the Contractor for that part of the Services;
 - b) less any Deductions ascertained in accordance with Clause 13 (Performance Monitoring and Deductions);
 - 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 this Contract.

25. **Final Accounting and Certification**

- 25.1 Within three (3) months of the Termination Date, the Contractor shall submit to the Authorised Officer an account in all respect of all the Services carried out

during the Contract Period, together with any other sums that the Contractor considers to be due to him under this Contract.

25.2 Within three (3) months of receipt of the final account, the Authorised Officer shall certify the amount which he/she considers properly due and payable in respect of the provision of the Services under this Contract.

25.3 The Council shall pay to the Contractor such amount as is properly certified within thirty (30) days following certification. In the event that any sums are payable by the Contractor to the Council, the Contractor shall pay such amount within thirty (30) days following certification.

SECTION 7 – PERSONNEL

26. Personnel

26.1 The Contractor shall ensure that at all times during the Contract Period:

- a) each of the Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- b) there is an adequate number of Personnel to properly provide the Services;
- c) the Personnel are adequately supervised, are informed of, and are discharging their duties in accordance with, the terms of this Contract;
- d) the Personnel are properly attired according to the nature of their duties in identifiable uniforms and, where necessary, protective clothing and footwear; and
- e) the Personnel observe all Health and Safety policies and legislative requirements in relation to their discharge of the Services.

26.2 The Contractor shall maintain up-to-date personnel records on all Personnel engaged in the provision of the Services and shall, upon reasonable request, provide reasonable information to the Authorised Officer on the Personnel to enable it to be satisfied that the obligations of this Clause 26 have been met. The Contractor shall ensure at all times that it has the right to provide these records under the Data Protection Laws.

26.3 The Contractor shall use all reasonable endeavours to ensure continuity of Personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

26.4 The Authorised Officer may, after due consideration of all the relevant circumstances, request that the Contractor, by notice in writing citing reasons, takes disciplinary action against or removes any key Personnel. Following the removal of any key Personnel for any reason, the Contractor shall ensure such

person is replaced promptly with another person with the necessary qualifications, skills and training to meet the requirements for the provision of the Services.

27. TUPE and Pensions

27.1 The Council and the Contractor agree that the contracts of employment of each of the Transferring Employees (except for the terms and conditions of such contracts which do not transfer pursuant to TUPE) will have effect from the Services Commencement Date as if originally between the Transferring Employee and the Contractor, except where any of the Transferring Employees object pursuant to Regulations 4(7), 4(9) or 4(11) of TUPE.

27.2 The Council and the Contractor have agreed the terms and conditions which shall apply in relation to the Transferring Employees from the Council in Schedule 5 (TUPE: Epping Forest DC) and in relation to the Transferring Employees from Sita and other contractors in Schedule 6 (TUPE: Sita and other contractors) and the parties shall comply with their respective obligations under the provisions of Schedules 5 and 6.

27.3 The Council and the Contractor, in addition to the matters referred to in this Clause 27, have agreed the terms and conditions which shall apply in relation to the pensions of the Transferring Employees in Schedule 5 and 6 and the parties shall also comply with their respective obligations under the provisions of Schedule 7 (Pensions). For any Council staff transferring who are members of the Local Government Pension Scheme, there is a requirement that the Contractor takes on Admitted Body Status and has a Pension Bond in place.

28. Human Rights/Equalities

28.1 In all its activities carried out pursuant to this Contract the Contractor shall comply and ensure that its agents, sub-contractors and employees comply with:

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

(ii) all Laws relating to equal opportunity including but without limitation to discrimination on the basis of age disability sex or sexual orientation race religion or belief, in particular the Equality Act 2010, and

(iii) the Council's equal opportunities policies and procedures as may be adopted and amended from time to time as notified to the Contractor.

SECTION 8 - LIABILITY AND INDEMNITY

29. Limitations on Liability

29.1 Nothing in this Clause 29 or otherwise in this Contract shall exclude or in any way limit the parties' liability for:

- a) fraud;
 - b) death or personal injury caused by its negligence;
 - c) breach of any obligation as to title implied by statute; or
 - d) any liability to the extent the same may not be excluded or limited by law.
- 29.2 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 this Contract.
- 29.3 Subject to Clause 29.1, neither party shall be liable to the other under or in connection with this Contract, or any collateral contract, for any indirect, special or consequential loss or damage which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities, loss of, damage to or corruption of data, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.
- 29.4 Subject to Clause 29.1, the Contractor's total aggregate liability:
- a) in respect of the indemnities given by the Contractor in this Contract is unlimited;
 - b) in respect of the Deductions, is limited, in each Contract Year, to 125% of the Contract Price payable by the Council in the applicable Contract Year; and
 - c) in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract, shall in no event exceed 200% of the Contract Price paid under this Contract in the subsequent Contract Year in respect of which the claim arises.
- 29.5 The provisions of Clause 29.3 shall not limit the Council's right to recover any of the following from the Contractor:
- a) additional operational and administrative costs and expenses arising from a Performance Failure;
 - b) wasted expenditure or charges rendered unnecessary and incurred by the Council arising from a Performance Failure;
 - c) any additional cost of procuring and implementing replacement services in the event of a Performance Failure;
 - d) any fines, expenses or other losses arising from a breach by the Contractor of any Applicable Laws;

- e) any loss of profits, business opportunity, revenue or goodwill which arises as a direct result of a Performance Failure.

29.6 Subject to Clause 29.1, the Council's total aggregate liability in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this Contract (other than a failure to pay the Contract Price for which the Council shall remain fully liable), shall in no event exceed the amount paid to the Contractor in the relevant Contract Year in respect of which the claim arises.

30. Insurance

30.1 The Contractor shall effect and maintain, with a reputable insurance company and during the Contract Period, such insurance as the Council considers necessary in respect of its obligations and liabilities under this Contract or as required by any Applicable Law, including without limitation:

- a) public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims; and
- b) employer's liability insurance with a limit of indemnity of not less than £10 million in relation to any one claim or series of claims.

30.2 Such insurance cover shall be in respect of all risks which the Contractor may incur in the performance of the Services, including death or personal injury, loss of or damage to property or any other loss.

30.3 The Contractor shall ensure that the Council is named as an additional insured party and shall provide that they shall be non-cancellable and not subject to reduction in coverage or policy amount except with the Council's written consent, such consent not to be unreasonably withheld.

30.4 The Contractor shall provide written evidence of such coverages to the Council at the Services Commencement Date and, upon reasonable request and within seven working days of such request, at any other time during the Contract Period.

30.5 If the Contractor fails to comply with its obligations under this Clause 30, the Council may pay any premiums necessary to effect the required insurances and/or keep any such insurances and may recover the costs of such arrangements from the Contractor as a debt.

SECTION 9 - INFORMATION REQUIREMENTS

31. Confidential Information

31.1 Save as may be necessary in the performance of the Services under this Contract, or as the Council may allow in writing the Contractor shall treat as confidential all information relating to this Contract and the Council shall take all reasonable steps to see that its employees do likewise.

- 31.2 The Council and the Contractor each undertake to hold in confidence for the others, to use only for the purposes contemplated in this Contract and not to publicise or otherwise disclose to any third party, the Confidential Information of the others.
- 31.3 Each of the parties undertakes to disclose Confidential Information of the other party only to those of its officers, employees, agents and sub-contractors who are directly involved in this Contract and shall ensure that such officers, employees, agents and sub-contractors are made aware of and observe the confidentiality obligations in this Clause 31.
- 31.4 Upon the expiry or termination of this Contract for any reason, each party shall return any and all Confidential Information of the other party then in its possession or control and will not retain any copies of the same.
- 31.5 The obligations in this Clause 31 shall survive the expiry or termination of this Contract for any reason, but shall not extend to any Confidential Information which:
- a) is or has become public knowledge other than by breach of this Clause 31;
 - b) is, at the time of receipt, lawfully in the possession of the recipient;
 - c) is lawfully obtained by the recipient from a third party who is under no obligation restricting its disclosure;
 - d) is required to be disclosed by law, regulation or order of a competent authority, provided that Clause 33 (Freedom of Information) shall apply to disclosures under the Freedom of Information Act 2000; or
 - e) is independently developed by the recipient or its employees, agents or contractors without access to the Confidential Information.
- 31.6 Nothing in this Clause 31 shall be deemed to prevent, or be construed as preventing, the Council from disclosing, solely for the purposes contemplated in this Contract, any Confidential Information to any other supplier, consultant or other person engaged by the Council in connection with the Services, provided that the Council has obtained from any such supplier, consultant or person a confidentiality undertaking on substantially the same terms as contained in this Clause 31. The Council shall notify the Contractor in writing prior to any such disclosure being made.
- 31.7 The Council and the Contractor may each use such data processing techniques, ideas or know-how obtained during the performance of the Services to further its business provided that in so doing it does not breach the confidentiality provisions of this Clause 31 or any intellectual property right of the other party.

32. Data Protection

- 32.1 In so far as the Contractor processes any personal data on behalf of the Council, the parties agree that the Council is the "data controller" and the Contractor is the "data processor", as those terms are defined in the Data Protection Laws.
- 32.2 The Contractor shall, in providing the Services, comply with the Data Protection Laws in connection with its data processing obligations under this Contract and shall not do, or permit to be done, anything which may cause or otherwise result in a breach by the Council of the same.
- 32.3 Notwithstanding any other provisions in this Contract, the Contractor shall:
- a) implement all such technical and organisational security measures necessary to protect the personal data against unauthorised or unlawful processing, alteration, disclosure or accidental loss, destruction or damage. The Contractor shall take such measures as may be required of a data controller under the Data Protection Laws or as may be required or directed by the Council from time to time;
 - b) take all reasonable steps to ensure that only duly authorised officers, employees, agents or sub-contractors are permitted to access the personal data and the Contractor shall assume full responsibility for monitoring and restricting the use of secure passwords, user identification numbers and other security procedures and measures subject to the Contractor's control;
 - c) ensure that its officers, employees, agents and sub-contractors accessing the personal data are made aware of its confidential nature and comply with the obligations set out in this Clause 32 relating the processing of the personal data;
 - d) permit the Council by its duly authorised representatives, upon reasonable prior notice to the Contractor, to inspect and audit the Contractor's data processing activities hereunder and shall comply with all reasonable request and directions by the Council to enable the Council to verify and/or procure that the Contractor is in full compliance with its data processing obligations under this Contract; and
 - e) notify the Council, within five (5) Business Days, if its receives a request from a data subject to have access to that person's personal data or a complaint or request relating to the Council's obligations under the Data Protection Laws.
- 32.4 The Contractor may appoint a sub-contractor to carry out its data processing obligations under this Contract, provided that the Contractor acknowledges and understands that it shall be and remain fully liable to the Council for the performance of any sub-contractor appointed by it hereunder. The Contractor shall ensure that the sub-contractor's contract is on terms which are substantially the same as those set out in this Contract.

32.5 The Contractor shall be liable for and shall indemnify the Council against any and all actions, claims, liabilities, losses, damages and expenses incurred by the Council which arise, directly or indirectly, out of or in connection with the Contractor's data processing activities under this Contract.

32.6 In this Clause 32, the terms "personal data", "process" or "processing" and "data subject" shall have the meanings ascribed to them in the Data Protection Laws.

33. **Freedom of Information**

33.1 The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and co-operate with the Council to enable the Council to comply with such information disclosure requirements. The Contractor shall bear the costs and expenses of providing such assistance.

33.2 The Council shall be responsible for determining at their absolute discretion whether the Confidential Information and any other information relating to the performance of the Services is to be disclosed in response to an information request, or is exempt from disclosure, in accordance with the provisions of FOIA and/or EIR. Neither party shall respond to any information request without the prior written consent of the other parties.

33.3 The Contractor shall within ten (10) Business Days of the Council's request provide the Council with any information it requires in order to comply with the Freedom of Information Act 2000.

33.4 The Contractor shall, and shall procure that its Sub-Contractors shall:

- a) transfer any information request to the Council as soon as reasonably practicable after receipt and in any event within three (3) days of receipt;
- b) provide the Council with a copy of all Information (within the meaning of section 84 FOIA) in its possession or power in the form that the Council requires within fourteen (14) days (or such other period as the Council may specify) of the Council requesting that Information; and
- c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to an information request within the time for compliance set out in section 10 FOIA or section 5 EIR.

33.5 The Contractor acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' code of Practice on the discharge of public authorities' functions under Part 1 FOIA, be obliged under FOIA or EIR to disclose information without consulting the Contractor or following consultation with the Contractor, and having taken its views into account, provided always that, where the Contractor is consulted, the Council shall take reasonable steps, where appropriate, to give the Contractor advance

notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

- 33.6 The Contractor shall ensure that all Confidential Information produced under or in the course of, or relating to, this Contract is retained for disclosure and shall permit the Council to inspect such records upon reasonable request from time to time.
- 33.7 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 33.4.

SECTION 10 - TERMINATION

34. Termination for Breach

- 34.1 The Council may terminate this Contract or any part of the Services immediately at any time by written notice to the Contractor if the Contractor:
- a) commits any material breach of its obligations under this Contract, which breach is irremediable, or which breach (if remediable) is not remedied within thirty (30) days after the service of written notice requiring the same;
 - b) commits persistent breaches of its obligations under this Contract, which breaches are irremediable, or which breaches (if remediable) are not (in each case) remedied within thirty (30) days after the service of written notice requiring the same; or
 - c) fails to adequately remedy any Performance Failures in accordance with the provisions of Clause 13 (Performance Monitoring and Deductions).
- 34.2 Without limitation to Clause 34.1, the Council may terminate this Contract or any part of the Services immediately at any time by written notice to the Contractor if the Contractor:
- a) breaches any of its warranties or undertakings under Clauses 10 and 11; or
 - b) commits a Prohibited Act.
- 34.3 The Council shall be entitled to terminate this Contract forthwith and recover from the Contractor the amount of any loss resulting in such cancellation if the Contractor its servants or agents with or without its knowledge have:
- a) Offered given or agreed to give any person financial or other advantage of any kind as an inducement or reward for doing or not doing anything in relation to the obtaining or carrying out of this Contract or any other contract with the Council or for showing or not showing favour or

disfavour to any person in relation to this Contract or any other contract with the Council; or

- b) Committed any offence under the Bribery Act 2010 or given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972

34.4 A notice of termination issued under Clauses 34.1, 34.2 and 34.3 shall specify:

- a) the nature of the breach;
- b) in the case of a Prohibited Act, the identity of the person whom the Council believe has committed the Prohibited Act;
- c) the duration of the termination period during which the Council require the Contractor to continue to provide and/or procure the provision of, the Services (or part thereof). Any such period may be extended or shortened by written agreement between the parties.

35. Termination for Insolvency, Change of Control or Without Cause

35.1 The Council may terminate this Contract immediately at any time by written notice to the Contractor in the event that:

- a) other than for the purposes of a bone fide reconstruction or amalgamation, a resolution by the Contractor for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or the Contractor being otherwise dissolved; or
- b) the appointment of an administrator of, or the making of an administration order in relation to the Contractor, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the Contractor's undertaking, assets, rights or revenue; or
- c) the Contractor entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors; or
- d) the Contractor being unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- e) the Contractor entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors.

35.2 The Council may terminate this Contract by written notice to the Contractor if the Contractor undergoes a Change of Control to which the Council reasonably object, provided that the Council serve their notice within three (3) months of the date on which the Contractor notified the Council of the Change of Control or on which the Council became aware of the Change of Control.

35.3 The Council may, subject to Clause 37.5, terminate this Contract at any time without cause by giving to the Contractor no less than three (3) months written notice.

36. Termination for Force Majeure

36.1 Either party may, during the continuance of any Force Majeure Event, terminate this Contract or the affected part of the Services by written notice to the other party if the Force Majeure Event continues for more than thirty (30) days.

37. Effect of Termination

37.1 The expiry or termination of this Contract for any reason shall not give either party the right to claim any compensation, indemnity or reimbursement whatsoever from the other by reason of such termination except as specifically provided in this Clause 37, but termination shall be without prejudice to any right or remedies available to, or any obligations or liabilities accrued to, either party at the effective date of termination.

37.2 Following the service of a notice of termination, the Contractor shall continue to provide and/or procure the provision of the Services, and shall ensure that there is no degradation in the Performance Standards, until the expiry of the termination period.

37.3 During the termination period or the twelve (12) months preceding the Termination Date, as applicable, the Contractor shall:

- a) co-operate fully with the transfer of the Services (or any part thereof) to the Council or the New Contractor; and
- b) comply with the provisions of Clause 38 (Exit and Service Transfer).

37.4 Upon termination of this Contract under Clauses 34, 35 or 36:

- a) the Council shall suspend all payments to the Contractor under this Contract until all costs and Deductions properly incurred or due under this Contract have been assessed; and
- b) the Contractor shall pay to the Council the costs reasonably incurred by the Council as a result of the termination and including the costs of arranging for the provision of the Services by a third party.

37.5 Upon termination of this Contract by the Council under Clauses 35.2 or 35.3, the Council shall pay to the Contractor the Compensation Sum.

37.6 On the Termination Date, the Contractor shall repay to the Council any amount which it may have been paid in advance in respect of the Services not provided or procured by the Contractor as at the Termination Date.

37.7 The parties acknowledge and agree that the provisions of and the rights of termination set out in this Clause 37 shall be the exclusive and complete statement of rights of termination available to the parties under or in connection with this Contract and shall accordingly supersede or replace entirely any rights of termination which may or would have been available to the parties as a matter of law (whether arising in or at common law, equity or otherwise) but for this Clause 37.7.

38. **Exit and Service Transfer**

38.1 The Contractor shall, by no later than the [third] Contract Year, produce an Exit Plan for an orderly Service Transfer. Within forty (40) Business Days, or such other period as the parties may agree, following the submission of the Exit Plan, the parties shall meet and use all reasonable endeavours to agree the Exit Plan. If the parties are unable to agree the Exit Plan within the specified time period, either party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.

38.2 The Contractor shall review and update the Exit Plan at regular intervals to reflect any changes to the Services, following which the Contractor shall submit the revised Exit Plan to the Council for review. The Council shall notify the Contractor if it wishes to discuss the revised Exit Plan. If the parties are unable to agree the revised Exit Plan, either party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.

38.3 Upon the expiry or termination of this Contract, the Contractor shall use all reasonable endeavours to facilitate a smooth Service Transfer and the Contractor shall at no time take any action during the Contract Period or thereafter which is intended, directly or indirectly, to prejudice, disrupt or otherwise frustrate the Service Transfer.

38.4 During the final twelve (12) months of the Contract Period or during the period of any notice of termination under this Contract, and in either case for a period not exceeding three (3) months thereafter, the Contractor shall fully co-operate with the Service Transfer and for the purposes of this Clause 38.4, the term "co-operate" shall include:

- a) liaising with the Council and/or a New Contractor, and providing reasonable assistance and advice concerning the Services and the Service Transfer;
- b) allowing any New Contractor access (at reasonable times and upon reasonable notice) to the Depots/Premises but not to the extent that it may cause interference with the provision of the Services by the Contractor;
- c) subject to the provisions of Clause 31 (Confidential Information), providing to the Council and/or to a New Contractor all and any information concerning the Services which is required for the efficient transfer of responsibility for their performance including the Contractor's costs of operating and maintaining the Services;

- d) using all reasonable endeavours to assign or otherwise transfer the benefit of any sub-contract or other contract related to the performance of the Services; and
- e) where there is a Relevant Transfer as a result of the termination or expiry of this Contract, complying with the provisions of Schedules 5, 6 and 7.

SECTION 11 - FORCE MAJEURE AND BUSINESS CONTINUITY

39. Force Majeure

39.1 Subject to the remaining provisions of this Clause 39, neither party shall be liable to the other for any delay or non-performance of its obligations under this Contract to the extent that such non-performance is due to a Force Majeure Event and provided the same arises without the fault or negligence of the affected party.

39.2 In the event that either party is delayed or prevented from performing its obligations under this Contract by a Force Majeure Event, the affected party shall:

- a) notify the non-affected party within two (2) Business Days of becoming aware of the same of such Force Majeure Event and the manner and extent to which its obligations are likely to be prevented or delayed;
- b) use reasonable endeavours to minimise the effects of such Force Majeure Event in accordance with Good Industry Practice; and
- c) resume performance of its obligations under this Contract as soon as reasonably practicable following the end of the Force Majeure Event.

39.3 As soon as practicable following the affected party's notification of a Force Majeure Event, the parties may consult with each other in good faith to agree appropriate terms to minimise the effects of the Force Majeure Event and to facilitate continued performance of this Contract.

39.4 Either party may, during the continuance of a Force Majeure Event, terminate this Contract in accordance with Clause 36 (Termination for Force Majeure).

40. Business Continuity

40.1 The Contractor shall, upon request:

- a) provide the Council with a copy of its business continuity plan or otherwise with satisfactory evidence of its business continuity measures (the "Business Continuity Plan"); and
- b) demonstrate to the Council's reasonable satisfaction the viability and effectiveness of the Contractor's business continuity measures by providing details of its business continuity exercises.

- 40.2 The parties shall meet within three (3) months of the Services Commencement Date to agree communication and action procedures in the event of a disruption occurring which interrupts the Contractor's business critical functions (whether wholly or in part) and/or has an impact of the Contractor's ability to provide the Services (the "Critical Interruption").
- 40.3 Following the declaration of a Critical Interruption the Contractor shall:
- a) implement the Business Continuity Plan;
 - b) continue to provide the affected Services to the Council in accordance with the Business Continuity Plan; and
 - c) restore the affected Services within the period set out in the Business Continuity Plan.
- 40.4 The Council may, from time to time, require members of the Contractor's Personnel to attend business continuity training, emergency planning training and/or such other training as may be relevant to deal with Critical Interruptions.
- 40.5 For the avoidance of doubt, a disruption of the Services due to a Critical Interruption shall not constitute a Performance Failure for the purposes of Clause 13 (Performance Monitoring and Deductions).

SECTION 12 - ASSIGNMENT AND SUB-CONTRACTING

41. Assignment

- 41.1 The Contractor shall not assign, transfer, sub-license, novate or otherwise dispose of any or all of its rights and obligations under this Contract. The Contractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatever any portion of this Contract without the written permission of the Council. Sub-letting other than that which may be customary in the trade concerned is also prohibited.
- 41.2 The Council shall be entitled to:
- a) assign, transfer novate, or otherwise dispose of its rights and obligations under this Contract (or any part thereof) to another Council within Essex; or
 - b) novate this Contract to any other body established by the Crown or under statute in order to substantially perform any of the functions that previously had been performed by the Council.

42. Sub-Contracting

- 42.1 The Contract shall not sub-contract the performance of its obligations under this Contract (in whole or in part) to any third party selected by it, without the prior

written consent of the Council (such consent not to be unreasonably withheld or delayed).

- 42.2 The Contractor shall remain responsible to the Council for the performance of its obligations under this Contract notwithstanding the appointment of any sub-contractor and shall be responsible for the acts or omissions of its sub-contractor.
- 42.3 The Contractor shall ensure that a copy of any sub-contract is provided to the Authorised Officer within ten (10) Business Days after it is executed.
- 42.4 To the extent that the Contractor sub-contracts any of its rights or obligations under this Contract to a third party:
- a) the Contractor shall, save as otherwise agreed by the Council in writing, ensure that the sub-contract includes the right, under the Contracts (Rights of Third Parties) Act 1999, for the Council to enforce the terms of that sub-contract as if they were the Contractor; and
 - b) any reference in this Contract to the Contractor's Personnel shall include those of the relevant sub-contractor.

SECTION 13 - AUDIT AND CORPORATE REQUIREMENTS

43. Audit

- 43.1. The Contractor shall assist representatives of the Council with any audit process or investigation by allowing them unrestricted access to any records e.g. documentation, files, statements, literature or any other similar material, in whatever form relating to the carrying out of the Services, including access to any premises in which such material is stored, processed or otherwise kept. Such representatives shall also be entitled to take copies of any and all documentation and to access and copy computer data.
- 43.2. The Contractor shall allow the Council's representatives to take statements from any member of the Contractor's staff at times within working hours in connection with an audit process or investigation. Such staff should be instructed by the Contractor to co-operate fully with such audit process or investigation.
- 43.3. The Contractor shall allow the Authorised Officer and any auditors or other advisers to the Council to access the Contractor's Personnel and to such of the Contractor's records as the Council may reasonably require to:
- a) fulfil any legally enforceable request by any Regulatory Body;
 - b) review compliance of the Services with the Performance Standards and this Contract generally;
 - c) verify the accuracy of any charges under this Contract or identify a suspected fraud; and/or

- d) verify the accuracy and completeness of any management information delivered or required by this Contract.
- 43.4. The Council shall use its reasonable endeavours to minimise any disruption or delay to the Services caused by the conduct of an audit and that, where possible, individual audits are co-ordinated with each other.
- 43.5. The Council shall provide to the Contractor no less than five (5) Business Days' written notice of its intention to conduct an audit, save where the audit is conducted in respect of a suspected fraud, in which event no notice shall be required.
- 43.6. The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this Clause 43. Where the audit identifies a material breach of the terms of this Contract by the Contractor, the Contractor shall reimburse the Council for the Council's costs reasonably incurred in the course of the audit.
- 43.7. The Council may increase the extent to which it monitors the Contractor's performance of the Services if the Contractor fails to meet the Performance Standards or fails to fulfil its other obligations under this Contract. The Authorised Officer shall notify the Contractor of the Council's intention to increase the level of its monitoring and the Contractor shall bear its own costs in complying with such monitoring.

44. Corporate Requirements

- 44.1 The Contractor shall comply with the Council's policies on equality, bribery, sustainability and whistle-blowing, as made available by the Council to the Contractor upon request.
- 44.2 The Contractor shall at all times during the performance of the Services be required to have regard to the Council's Sustainability Strategy and Sustainable Procurement Policy, which sets out requirements aimed at conserving energy, water, wood, paper and other resources and at minimising the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

SECTION 14 - NOTICES AND PUBLICITY

45. Notices

- 45.1 Any notice or other document to be served under this Contract may be delivered or sent by prepaid first class recorded delivery or registered post to the party to be served, at the address of that party identified at the head of this Contract or at any other address as either party may have notified to the other and shall be deemed to have been received by the addressee within 72 hours of posting. Any notice or document served on the Council should be addressed to the Chief Executive and sent to the address at the head of this Contract

- 45.2 In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery or registered letter.
- 45.3 Additionally, any notice shall be treated as having been served on delivery if:
- a) delivered by hand, at the time of delivery;
 - b) delivered by courier, two (2) Business Days after despatch;
 - c) in the case of pre-paid first-class post or registered post, three (3) Business Days from the date of posting;
 - d) in the case of fax, on the day of transmission if sent before 4.00 pm on any Business Day and otherwise at 9.00 am on the next Business Day, subject to confirmation of transmission.
- 45.4 Notices sent by email (other than day-to-day communications) shall not be permitted.

46. **Publicity**

- 46.1 Neither party shall make any press announcements or publicise this Contract or its contents in any way without the prior written consent of the other party, not be unreasonably withheld or delayed.

SECTION 15 - DISPUTE RESOLUTION AND GOVERNING LAW

47. **Dispute Resolution Procedure**

- 47.1 All disputes between the Council and the Contractor arising out of or in connection with this Contract shall, in the first instance, be referred to the Authorised Officer and Contract Manager for resolution.
- 47.2 If the dispute is not resolved within a maximum of ten (10) Business Days, it shall be referred to the parties' respective senior management.
- 47.3 If, having been so referred, the dispute is not resolved within a maximum of twenty (20) Business Days, such dispute may be referred, by agreement between the parties, to a single Independent Expert. The Independent Expert shall be selected by mutual agreement or, failing such agreement within fifteen (15) Business Days, shall be selected by the Relevant Professional Body in accordance with Clause 47.4. Decisions of the Independent Expert shall be final and binding. The fees of the Independent Expert shall be borne by the parties in such proportions as may be determined by the Independent Expert.
- 47.4 For the purposes of Clause 47.3, the Relevant Professional Body shall be:

- a) in the case of a dispute under Section 6 (Financial) i.e. Clauses 22 to 25 inclusive, the Institute of Chartered Accountants in England and Wales (or any successor body);
- b) in the case of a dispute in connection with the provision of the Services or the Specification, the Chartered Institute of Waste Management (or any successor body) for Lot 1, the Institute of Groundsmanship for Lot 2 and the Freight Transport association for Lot 3; and
- c) in the case of all other disputes, the Law Society of England and Wales or such other professional body as designated or recommended by it.

47.5 If either the Council or the Contractor does not agree with any dispute being referred for resolution in accordance with this Clause 47, then the dispute shall be determined by the courts in accordance with Clause 48 (Law and Jurisdiction).

48. Law and Jurisdiction

48.1 The construction, validity and performance of this Contract shall be governed by English law and, subject to Clause 47, each party to this Contract irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in any way relate to this Contract or its formation and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.

SECTION 16 - GENERAL

49. Entire Contract

49.1 This Contract, together with the Schedules and all other documents attached or referred to in, or executed contemporaneously with this Contract, constitutes the entire Contract between the parties regarding its subject matter and supersedes any prior contract, arrangement and understanding between the parties.

49.2 No representation, promise or undertaking shall be taken to have been made or implied from anything said or written in negotiations between the parties prior to the Effective Date, except as expressly stated in this Contract. Each party acknowledges and agrees that it has not relied upon any information given or representation made by or on behalf of the other in entering into this Contract.

49.3 Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this Contract and that party's only remedies shall be for breach of contract as provided in this Contract.

49.4 Nothing in this Clause 49 shall operate to limit or exclude any liability or either party for, or remedy against either party in respect of, any fraudulent misrepresentation.

50. **Third Party Rights**

50.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Contract is not intended to, nor does it give, any person who is not a party to it any right to enforce any of its provisions.

51. **Waiver**

51.1 The failure of either party to enforce or exercise at any time any term of or any right pursuant to this Contract does not constitute, and shall not be construed as, a waiver of such term or right and shall not affect that party's right to enforce it at a later stage.

52. **Severability**

52.1 If any term of this Contract is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Contract and shall in no way affect the legality, validity or enforceability of the remaining terms.

53. **Survival**

53.1 Provisions of this Contract which either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such expiry or termination.

54. **Independent Parties**

54.1 The relationship of the parties is that of independent contractors dealing at arm's length and nothing in this Contract shall constitute either party as the agent, employee or representative of the other, or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as having authority to do the same.

55. **Injunctive Relief**

55.1 The parties acknowledge and agree that a breach by the Contractor of any of the terms of this Contract may result in irreparable and continuing damage to the Council for which there may or will be no adequate remedy at law, and that in the event of such breach, the Council shall be entitled to apply for injunctive relief and/or a decree for specific performance and such other and further relief as may be appropriate.

56. **Costs**

56.1 The parties shall at the requesting party's reasonable expense do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by this Contract.

57 Counterparts

- 57.1 This Contract may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

58 Copyright

- 58.1 The Contractor hereby grants to the Council an irrevocable, non-exclusive licence in respect of the documents produced by the Contractor for the purposes of this Contract ('Documents'). The Council shall be entitled to use and to reproduce any of the Documents for any purpose whatsoever connected with the Services. The Council shall be entitled to grant sub-licences in the terms of this Contract.
- 58.2 The Contractor warrants that the use of the Documents for the purpose of the Services will not infringe the right of any third party.
- 58.3 After the termination or conclusion of the Contractor's employment under this Agreement, the Contractor shall supply the Council with copies and/or computer disks / USB records of such of the Documents as the Council may from time to time request, and the Council shall pay the Contractor's reasonable costs of producing such copies or disks / USB records.

59 Standing Orders

- 59.1 If asked to supervise a contract on its behalf, the Contractor shall ensure that there shall be compliance with the requirements of the Council's Standing Orders relating to Contracts as though the Contractor/Consultant was a Chief Officer.

IN WITNESS whereof the parties hereto have executed this Contract as a Deed the day and year first before written:

The common seal of
EPPING FOREST DISTRICT COUNCIL
was hereunto affixed in the presence of:

Attesting Officer

For and on behalf of
[CONTRACTOR]

Director

SCHEDULE 1

Service Specification

To be completed prior to Contract award. Please refer to separate Service Specification (Outline Solutions).

SCHEDULE 2

Pricing Schedules / Bills of Quantities

To be completed prior to Contract award. Please refer to Response Document:
Pricing Schedules / Bills of Quantities.

SCHEDULE 3

Officers

To be completed prior to Contract award.

SCHEDULE 4

Depots

SCHEDULE 5

TUPE and Pensions: Epping Forest DC

1. Definitions

1.1 In this Schedule 5, the following words shall have the following meanings:

Administering Authority	Essex County Council;
Admission Agreement	the agreement to be entered into in accordance with regulation 6 of the Local Government Pension Scheme (Administration) Regulations 2008, as amended;
Appropriate Pension Provision	<p>in respect of the Eligible Employees, either:</p> <p style="margin-left: 40px;">a) membership or continued membership or continued eligibility for membership of the pension scheme of which they were members, or were eligible to be members, or were in a waiting period to become a member of, prior to the Relevant Transfer; or</p> <p style="margin-left: 40px;">b) pension rights, which are certified by the Government's Actuary Department as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members.</p>
Code Dispute Resolution Procedure	the dispute resolution procedure contained in Appendix 3 to the Employment and Partnerships Technical Note (ODPM March 2004);
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 thereof, at the Service Transfer Date;
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 thereof, at the date of preparation of the list;
Eligible Employees	the Transferring Employees who are active members of (or eligible to join) the LGPS on the Relevant Transfer Date;
Employment Liability Information	the information that the Council is obliged to notify to the Contractor under regulation 11(2) of TUPE;

LGPS	the Local Government Pension Scheme;
LGPS Regulations	such regulations as are made by the relevant government office for the regulation of the LGPS including: <ul style="list-style-type: none"> a) the Local Government Pension Scheme (Administration) Regulations 2008; b) the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007; c) the Local Government Pension Scheme (Transitional Provisions) Regulations 2008; and d) the Local Government Pension Scheme Regulations 1997;
Relevant Employees	those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a New Contractor by virtue of the application of TUPE;
Relevant Transfer	a relevant transfer for the purposes of TUPE;
Relevant Transfer Date	the date on which the Services transfer to the Contractor from the Council;
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 Laws), but including in an anonymised format: <ul style="list-style-type: none"> (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 customer 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).

2. Transfer of Employees to the Contractor

- 2.1. The Council and the Contractor acknowledge and agree that TUPE shall, subject to the remaining provisions of this Contract, apply to the transfer to the Contractor of responsibility for provision of the Services and that a Relevant Transfer to the Contractor will take place on the Relevant Transfer Date.
- 2.2. In accordance with Clause 2.1 of this Schedule 5, the contracts of employment of all Eligible Employees shall transfer to the Contractor and have effect on and from the Relevant Transfer Date as if originally made between the Eligible Employees and the Contractor.
- 2.3. The Council shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Eligible Employees, including without limitation, all wages, holiday pay, payments of PAYE, national insurance contributions, pensions contributions up to (but not including) the Relevant Transfer Date.
- 2.4. The Council shall provide and, where required by TUPE, update the Employee Liability Information for the Eligible Employees to the Contractor. The Council warrants that the Employee Liability Information is complete and accurate as it is aware or should reasonably be aware as at the date of its disclosure.
- 2.5. Subject to Clause 2.4 of this Schedule 5, the Council shall indemnify and keep indemnified the Contractor against any losses (except indirect or consequential losses) incurred by the Contractor in connection with any claim or demand by any Eligible Employee arising out of the employment by the Council of any Eligible Employee. This indemnity shall apply provided that it arises from any fault, act or omission of the Council in relation to any Eligible Employee prior to the Relevant Transfer Date (except where such act, fault or omission arises as a result of the Contractor's failure to comply with regulation 13 of TUPE) and

any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Relevant Transfer Date.

2.6. The Contractor shall indemnify and keep indemnified the Council against:

- a) any claim for constructive dismissal or otherwise arising directly or indirectly from any changes to the terms and conditions of employment the Contractor may take or consider taking on or after the Relevant Transfer Date;
- b) any and all claims arising from the Eligible Employees informing the Council they object to being employed by the Contractor;
- c) any and all claims which directly or indirectly relate to or arise as a consequence of change in the identity of the Eligible Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Contractor may consider taking on or after the Relevant Transfer Date.

2.7 The Contractor shall be liable for and indemnify and keep indemnified the Council against any failure to meet all remuneration, benefits, entitlements and outgoings for the Eligible Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and otherwise from and including the Relevant Transfer Date.

2.8 The Contractor shall immediately on request by the Council provide details of any measures that the Contractor envisages that it will take in relation to any Eligible Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Contractor will give confirmation of that fact, and shall indemnify the Council against any and all claims arising or resulting from any failure by it to comply with this obligation.

3. Employment Exit Provision

3.1 This Contract envisages that the identity of the provider of the Services (or any part of the Services) may change (whether as a result of the expiry or termination of this Contract or otherwise) resulting in Service Transfer, whether in whole or in part. If a Service Transfer is a Relevant Transfer then the Council or the New Contractor will inherit liabilities in respect of the Relevant Employees with effect from the Service Transfer Date subject to the indemnities given in this Schedule.

3.2 The Contractor shall:

- a) twelve (12) months immediately preceding the Expiry Date; or
- b) upon receiving notice of termination of this Contract; or
- c) on request from the Council; and
- d) at such times as required by TUPE,

promptly provide, at no cost to the Council, in respect of any person engaged or employed by the Contractor in the provision of the Services, the Contractor's Provisional Staff List and the Staffing Information, together with any additional

information required by the Council, including information as to the application of TUPE to the employees. The Contractor shall notify the Council of any material changes to this information as and when they occur.

- 3.3 At least fourteen (14) days prior to the Service Transfer Date, the Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the New Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects and identify which of the Contractor's Personnel named are Relevant Employees.
- 3.4 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 New Contractor for any services that are substantially the same as or similar to the Services (or any part thereof).
- 3.5 The Contractor warrants that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information (together, the "TUPE Information") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Contractor's Final Staff List. The Contractor shall, and shall procure that any Sub-Contractor shall, ensure at all times that it has the right to provide the TUPE Information under the Data Protection Laws.
- 3.6 In the six (6) months prior to expiry date of, or following notice of termination of, this Contract, the Contractor shall not materially increase or decrease the total number of staff listed on the Contractor's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent (such consent not to be unreasonably withheld). The Contractor shall provide to the Council full details of any proposed changes and the Council shall be afforded reasonable time to consider them.
- 3.7 The Contractor shall indemnify and keep indemnified the Council and the New Contractor against all claims, losses or damages incurred by the Council or the New Contractor in connection with or as a result of any claim or demand against the Council or the New Contractor by:
- a) any person who is or has been employed or engaged by the Contractor in connection with the provision of the Services; or
 - b) any trade union or staff association or employee representative (if such claim arises as a result of any act, fault or omission of the Contractor),

arising from or connected with any failure by the Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and/or any obligation of this Contract, whether any such claim arises or has its origin before, on or after the Service Transfer Date.

- 3.8 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Service Transfer will be fulfilled.
- 3.9 The Council and the Contractor each agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to Clauses 3.2 to 3.8 of this Schedule 5 to the extent necessary to ensure that the New Contractor shall have the right to enforce the obligations owed to, and the indemnities given to, the New Contractor by the Contractor or the Council in its own right under section 1(1) of the Contract (Rights of Third Parties) Act 1999.
- 3.10 Notwithstanding Clause 3.9 of this Schedule 5, the parties agree that they may by agreement rescind or vary any terms of this Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

4. Pensions

- 4.1 The Contractor shall procure that the Eligible Employees are offered Appropriate Pension Provision with effect from the Relevant Transfer Date up to and including the date of expiry or termination of this Contract.
- 4.2 Where the Contractor wishes to offer the Eligible Employees membership of the LGPS, the Contractor shall procure that it shall become an Admission Body. The Contractor shall before the Relevant Transfer Date enter into an Admission Agreement with the Administering Authority and the Council to have effect on and from the Relevant Transfer Date.
- 4.3 The Contractor shall prior to the Relevant Transfer Date obtain an indemnity or bond (in the appropriate form) required in accordance with the Admission Agreement.
- 4.4 Where the Contractor is an Admission Body, the Contractor shall award benefits (where permitted) to the Eligible Employees under the Compensation Regulations and/or the LGPS in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.
- 4.5 The Contractor shall indemnify and keep indemnified the Council and/or the New Contractor from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of this Contract (howsoever caused).
- 4.6 Membership to the LGPS will be closed on 3 November 2014 and no Eligible Employees will be entitled to access the LGPS from that date.
- 4.7 Contributions to the LGPS fund will be fixed at a percentage to be agreed between the Contractor and the Council in writing.
- 4.8 [Apportionment of Pensions liabilities – tbc]

SCHEDULE 6

TUPE and Pensions: Sita and other contractors

1. Definitions

1.1 In this Schedule 6, the following words shall have the following meanings:

Appropriate Provision	Pension	in respect of the Transferring Employees, not being Eligible Employees, either: <ul style="list-style-type: none"> a) pension rights which are certified by the Government's Actuary Department as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members; or b) membership of a good quality employer pension scheme, being either (i) a contracted-out final salary based defined benefit scheme, or (ii) a defined contribution scheme under which the employer must match employee contributions by up to at least 6 per cent; or c) a stakeholder pension scheme, under which the employer matches employee contributions by up to at least 6 per cent;
Contractor's List	Final Staff	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 Staff List	Provisional	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;
Council		Epping Forest District Council;
Eligible Employees		the Transferring Employees who are active members of (or eligible to join) the LGPS on the Relevant Transfer Date;
Employment Information	Liability	in respect of each of the Transferring Employees: <ul style="list-style-type: none"> a) the identity and age of each Transferring Employee; b) the Transferring Employee's written statement of employment particulars (as required under section

1 of the Employment Rights Act 1996);

- c) information about any disciplinary action taken against the Transferring Employee and any grievances raised by any Transferring Employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 or any other applicable code or statutory procedure applied, within the previous two (2) years;
- d) information about any court or tribunal case, claim or action either brought by the employee against the Third Party Employer or where the Third Party Employer has reasonable grounds to believe that such action may be brought against the Contractor arising out of the Transferring Employee's employment with the Third Party Employer;

Relevant Employees those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a New Contractor by virtue of the application of TUPE;

Relevant Transfer a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Relevant Transfer Date the date on which the Services transfer to the Contractor from the Council;

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 Laws), 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 customer 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);

Third Party Employers the service providers currently engaged by the Council to provide the Services.

2. Transfer of Employees to the Contractor

2.1 The Council and the Contractor each acknowledge and agree that:

- a) the contracts of employment of the Transferring Employees shall transfer to the Contractor from the Third Party Employers on the Relevant Transfer Date. The Contractor shall comply with their obligations under TUPE in respect of the Transferring Employees;
- b) the Council shall use its reasonable endeavours to procure that Third Party Employers providing waste, arboriculture and abandoned vehicles services in its administrative area provide and update to the Contractor the Employee Liability Information for the Transferring Employees, as required by TUPE; and
- c) the Council gives no warranty as to the accuracy or completeness of the Employee Liability Information provide to the Contractor by the Third Party Employers.

2.2 The Contractor shall indemnify and keep indemnified the Council against:

- a) any claim for constructive dismissal or otherwise arising directly or indirectly from any changes to the terms and conditions of employment of the Transferring Employees the Contractor may take or consider taking on after the Relevant Transfer Date;

- b) any and all claims arising from the Transferring Employees informing their respective Third Party Employers that they object to being employed by the Contractor; and
- c) any and all claims which directly or indirectly relate to or arise as a consequence of the change identity of the employer of the Transferring Employees as a result of the operation of TUPE or as a result of any proposed measures the Contractor may consider taking on or after the Relevant Transfer Date.

2.3 The Contractor shall indemnify the Council against any failure to meet all remuneration, benefits, entitlements and outgoings for their respective Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions on and from the Relevant Transfer Date.

2.4 The Contractor shall immediately on request from the Council provide details of any measures that the Contractor envisages it will take in relation to any of its Transferring Employees and, if there are no such measures, the Contractor shall give confirmation of that fact to the Council and shall indemnify and keep indemnified the Council against all direct losses resulting from any failure by it to comply with this obligation.

3. Employment Exit Provisions

3.1 This Contract envisages that the identity of the provider of the Services (or any part of the Services) may change (whether as a result of the expiry or termination of this Contract or otherwise) resulting in Service Transfer, whether in whole or in part. If a Service Transfer is a Relevant Transfer then the Council or the New Contractor will inherit liabilities in respect of the Relevant Employees with effect from the Service Transfer Date subject to the indemnities given by the Contractor in this Schedule.

3.2 The Contractor shall:

- a) twelve (12) months immediately preceding the Expiry Date; or
- b) upon receiving notice of termination of this Contract; or
- c) on request from the Council; and
- d) at such times as required by TUPE,

promptly provide, at no cost to the Council, in respect of any person engaged or employed by the Contractor in the provision of the Services, the Contractor's Provisional Staff List and the Staffing Information, together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Contractor shall notify the Council of any material changes to this information as and when they occur.

3.3 At least fourteen (14) days prior to the Service Transfer Date, the Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the New Contractor, the Contractor's Final Staff List, which shall be complete

and accurate in all material respects and identify which of the Contractor's Personnel named are Relevant Employees.

- 3.4 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 New Contractor for any services that are substantially the same as or similar to the Services (or any part thereof).
- 3.5 The Contractor warrants that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information (together, the "TUPE Information") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Contractor's Final Staff List. The Contractor shall, and shall procure that any Sub-Contractor shall, ensure at all times that it has the right to provide the TUPE Information under the Data Protection Laws.
- 3.6 In the six (6) months prior to expiry date of, or following notice of termination of, this Contract, the Contractor shall not materially increase or decrease the total number of staff listed on the Contractor's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent (such consent not to be unreasonably withheld or delayed). The Contractor shall provide to the Council full details of any proposed changes and the Council shall be afforded reasonable time to consider them.
- 3.7 The Contractor shall indemnify and keep indemnified the Council and the New Contractor against all claims, losses or damages incurred by the Council or the New Contractor in connection with or as a result of any claim or demand against the Council or the New Contractor by:
- a) any person who is or has been employed or engaged by the Contractor in connection with the provision of the Services; or
 - b) any trade union or staff association or employee representative (if such claim arises as a result of any act, fault or omission of the Contractor),
- arising from or connected with any failure by the Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and/or any obligation of this Contract, whether any such claim arises or has its origin before, on or after the Service Transfer Date.
- 3.8 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Service Transfer will be fulfilled.
- 3.9 The Council and the Contractor each agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to Clauses 3.2 to 3.8 of this Schedule 6 to the extent necessary to ensure that the New Contractor shall have the right to enforce the obligations owed to, and the indemnities given to, the New

Contractor by the Contractor or the Council in its own right under section 1(1) of the Contract (Rights of Third Parties) Act 1999.

3.10 Notwithstanding Clause 3.9 of this Schedule 6, the parties agree that they may by agreement rescind or vary any terms of this Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

4. Pensions

4.1 The Contractor shall procure that the Transferring Employees are offered Appropriate Pension Provision with effect from the Relevant Transfer Date up to and including the date of expiry or termination of this Contract.

[Detailed pensions provisions to be inserted]

SCHEDULE 7

Pensions

This Schedule is provided in different file formats. During final tender stage please refer to the following:

SCHEDULE 8

Compensation on Termination