

**HERTFORDSHIRE COUNTY COUNCIL**



**FRAMEWORK AGREEMENT FOR THE PROVISION OF  
COLLECTION AND DISPOSAL OF CLINICAL WASTE,  
OFFENSIVE WASTE AND SMALL ANIMAL REMAINS**

**CONTRACT REF: HCC1911137**

**BETWEEN**

**HERTFORDSHIRE COUNTY COUNCIL  
(herein referred to as 'the Council')**

**AND**

**[CONTRACTOR NAME TO BE INSERTED UPON  
AWARD]**

## FORM OF AGREEMENT

THIS AGREEMENT dated the \_\_\_\_\_ day of \_\_\_\_\_ 20[ ]

is made between

**Hertfordshire County Council ("Council") of:**

County Hall  
Hertford  
Hertfordshire  
SG13 8DE

and

**[Insert Contractors Registered Name]**, (Company Registration Number [ ])  
situate at [ ] ("**Contractor**")

together referred to as "Parties"

IT IS AGREED THAT:

1. This Form of Agreement with the following attached documents will together form the Framework Agreement documents:

**Conditions of the Framework Agreement**

**Schedule 1 - Specification**

**Schedule 2 - Performance Monitoring/KPI's**

**Schedule 3 - Change Control Procedure**

**Schedule 4 - Instructions to Tenderers**

**Schedule 5 - Tender Response Document**

**Schedule 6 - Copy Framework Agreement Award Letter**

**Schedule 7 - Not Used**

**Schedule 8 - Any other relevant correspondence**

**Schedule 9 - Order Form**

**Schedule 10 - Call-Off Terms and Conditions**

2. The Framework Agreement effected by the signing/sealing (as appropriate) of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Framework Agreement and supersedes all prior contracts, negotiations, representations or understandings whether written or oral.
3. This Framework Agreement shall commence on the **27 January 2020** and shall continue for a period of three (3) years thereafter until **26 January 2023** unless extended or terminated in accordance with the provisions of this Framework Agreement. The Council may at its absolute discretion extend the Framework Period/ Term in accordance with condition 3.2.
4. This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Contractor under this Framework Agreement.
5. It is the Parties' intention that Participating Bodies have no obligation to place Orders with the Contractor under this Framework Agreement or at all.

**IN WITNESS** whereof the parties have signed this Agreement the day and year first before written:

**EXECUTED AS A DEED BY  
HERTFORDSHIRE COUNTY COUNCIL**

.....  
**Chief Legal Officer**

**SIGNED AS A DEED ON BEHALF OF**  
**[*please insert name of Contractor*]**

acting by:

.....  
Director

.....  
Director / Company Secretary\*  
[\*Please delete as appropriate]

*or*

**SIGNED AS A DEED ON BEHALF OF**  
**[*please insert name of Contractor* ]**

acting by:

.....  
Director

in the presence of -:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

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##### SCHEDULE 9 - ORDER FORM

##### SCHEDULE 10 - CALL-OFF TERMS AND CONDITIONS

## CONDITIONS OF THE FRAMEWORK AGREEMENT

### INTERPRETATION AND DEFINITIONS

Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

#### A. DEFINITIONS AND INTERPRETATION

##### 1. DEFINITIONS

<b>"Accounting Period"</b>	means the twelve (12) consecutive periods of four (4) or five (5) weeks making up the Council's Financial Year. Each week in an Accounting Period shall begin on a Monday and the first Accounting Period in any financial year shall begin on or within one week of 1 <sup>st</sup> April as determined by the Framework Agreement Manager;
<b>"Affected Party"</b>	means a party affected by a Force Majeure Event;
<b>"Amalgam Waste"</b>	means waste containing amalgam or material contaminated with amalgam arising from dental surgeries.
<b>"Annual Value"</b>	means the estimated annual value of the Framework Agreement for Hertfordshire County Council only, being £100,000 at the date of this Invitation to Tender.
<b>"Approval"</b>	means the written consent of the Framework Agreement Manager or any person authorised by the Framework Agreement Manager. ("Approved" or "Approve" shall be construed accordingly);
<b>"Approved Vehicles"</b>	means those vehicles from time to time declared by the Councils Council's Framework Agreement Manager to be authorised to deliver Waste to the Transfer Station. Such a declaration may refer to an individual vehicle, vehicles or to any description or class of vehicles.
<b>"Approved Waste"</b>	means Waste permitted to enter the Disposal/Treatment Facility for Disposal/Treatment as agreed with the successful bidder;
<b>"Audit"</b>	means an audit carried out pursuant to <b>Condition 18</b> (Records and Audit Access);
<b>"Authority to Transfer Collected Waste Ticket"</b>	means a three part ticket issued by the Council to accompany each Waste Collection Authority (WCA) vehicle confirming its load status as Approved Waste;
<b>"Award Criteria"</b>	means the award criteria specified in <b>Appendix 1</b> ;
<b>"Award Date"</b>	means the next Working Day after the end of the 10 day standstill period, unless at the Council's discretion, such award is deferred due to any challenge during the 10 day standstill period;

<b>“BACS”</b>	Bankers' Automated Clearing Services is a United Kingdom scheme for the electronic processing of financial transaction;
<b>“Bank Holiday”</b>	means the days designated by the Banking and Financial Dealings Act 1971 and any other days that are so appointed by royal proclamation;
<b>“Basic Disclosure”</b>	means a Basic Disclosure check carried out through the Disclosure and Barring Service, which is required where a Contractor is engaged in a position of trust but is not eligible for a Standard Disclosure check, Enhanced with Barred List Check or Enhanced without Barred List Check;
<b>“Best Value Duty”</b>	means the duty imposed on the Council by Part 1 of the Local Government Act 1999 (“1999 Act”) (as may be amended from time to time) and under which the Council is under a statutory duty to continuously improve the way its functions are exercised having regard to a combination of economy efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Public Sector Audit Appointments Limited and the Chartered Institute of Public Finance and Accountancy pursuant to or in connection with Part 1 of the 1999 Act and any subsequent legislation;
<b>“Bribery Act”</b>	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
<b>“Business Continuity Plan”</b>	means a plan agreed between the Parties to provide effective prevention and recovery in connection with the Services if the Services are exposed to internal or external threats;
<b>“Calendar Days”</b>	means a day reckoned from midnight to midnight and shall include weekends and bank holidays in England and Wales;
<b>“Call Off Contract”</b>	means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between the Council and the Contractor comprising the Call-Off Terms and Conditions, Order Form and any schedules, appendices, documents referred to therein, the ITT, Tender and any schedules, appendices, documents referred to therein, copy contract award letter and any other relevant correspondence (as may be amended pursuant to <b>Condition 30</b> (Variations to the Framework Agreement));
<b>“Call Off Contract Period”</b>	means the period during which the Call Off Contract shall remain in force and effect pursuant to <b>Clause 3</b> (Duration of Contract) and shall be the Initial Term as may be extended in accordance with <b>Clause 3</b> (Duration of Contract);

<b>“Change Control Procedure”</b>	means the change control procedure set out in <b>Condition 30</b> (Variations to the Framework Agreement and <b>Schedule 3</b> (Change Control Procedure);
<b>“Change in Law”</b>	means the coming into effect after the Commencement Date of this Contract of: <ul style="list-style-type: none"> <li>(a) Legislation, other than any legislation which on the Commencement Date of this Contract has been published: <ul style="list-style-type: none"> <li>i. In a Bill as part of a Government Departmental Consultation Paper</li> <li>ii. In a Bill</li> <li>iii. In a draft statutory instrument or</li> <li>iv. Published as a proposal in the Official Journal of the European Communities</li> </ul> </li> <li>(b) Any legal guidance; or</li> <li>(c) Any applicable judgment of a relevant Court of law which changes or establishes a binding precedent;</li> </ul>
<b>“Charging Period”</b>	means the invoicing period when an invoice is required to be submitted by the Contractor to the Council;
<b>“Clause”</b>	means the Clause(s) contained within the Conditions of Contract;
<b>“Clinical Waste”</b>	means waste from a healthcare activity (including veterinary healthcare) that— <ul style="list-style-type: none"> <li>(a) contains viable micro-organisms or their toxins which are known or reliably believed to cause disease in humans or other living organisms,</li> <li>(b) contains or is contaminated with a medicine that contains a biologically active pharmaceutical agent, or</li> <li>(c) is a sharp, or a body fluid or other biological material (including human and animal tissue) containing or contaminated with a dangerous substance within the meaning of Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances,</li> <li>(d) and waste of a similar nature from a non-healthcare activity;</li> </ul>
<b>“Clinical Waste Compound”</b>	means an area within the Transfer Station specifically designed to store Approved Waste;
<b>“Collect”</b>	means to unload empty Containers at The Transfer Station and load full Containers containing Approved Waste onto Contractor Vehicles in accordance with relevant legislation and “Collection” and “Collecting” shall be construed accordingly.
<b>“Commencement Date”</b>	means 27 January 2020;



**"Commercially Sensitive Information"**

means any Confidential Information comprised of information:-

- (a) which is provided in writing by the Contractor to the Council in connection with the Framework Agreement in confidence and designated as Commercially Sensitive Information; and/or
- (b) that constitutes a trade secret;

**"Complaint"**

means any formal complaint raised in accordance with **Condition 37** by the Council in relation to the Framework Agreement or any Call-Off Contract;

**"Conditions of the Framework Agreement"**

means these terms and conditions of the Framework Agreement referred to as 'Clauses' and/or any variation duly agreed in writing in accordance with **Condition 30** (Variations to the Framework Agreement)

**"Confidential Information"**

means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA;

**"Consortium"**

means an association of two or more individuals, companies or Organisation (or any combination of these entities) working together with the objective of pooling their resources and acting jointly to deliver the Contract

**"Consumer Price Index" or "CPI"**

means the official measure of inflation against consumer prices in the United Kingdom;

**"Container"**

means a new, sanitised, fit for purpose UN Approved rigid lockable container yellow in colour sited at the Transfer Station in which Approved Waste is deposited and which shall be exchanged for an empty container. The full container of Approved Waste shall be transported in Contractor Vehicles to a Disposal Facility where the Approved Waste is Disposed of or Treated by an approved method and the container sanitised for re-use.

**"Contract"**

means the agreement entered into between the Council and the Contractor including the Conditions of Contract and the **Schedules** attached to the Conditions of Contract and listed in the Form of Agreement;

**"Contracting Authority"**

means any contracting authority as defined in the Public Contracts Regulations 2015;

**"Contractor"**

means [to be inserted on award];

<b>“Contractor’s Authorised Representative”</b>	means such person nominated in writing by the Contractor to act as the Contractor’s representative in relation to this Contract and approved by the Framework Agreement Manager;
<b>“Contractor’s Equipment”</b>	means all equipment, parts, materials, articles and/or mechanisms provided by the Contractor for use in the provision of the Services;
<b>“Contractor’s Premises”</b>	means any premises owned by the Contractor or for which the Contractor has legal responsibility;
<b>“Contractor’s Vehicles”</b>	means vehicles owned by the successful bidder or their haulage sub-contractor authorised to transport empty Containers to and unload them at the Transfer Station and to Collect and Transport Containers full of Approved Waste to the Disposal Facility for Disposal or Treatment.
<b>“Contract Period”</b>	has the same meaning as Call Off Contract Period;
<b>“Council”</b>	means Hertfordshire County Council or its successor body as applicable;
<b>“Council Data”</b>	means <ul style="list-style-type: none"> <li>(i) all data, records, information, text, drawings, reports diagrams, images, or sounds generated or processed by the Contractor or provided to the Contractor for processing under this Contract which at all times shall remain the property of the Council; or</li> <li>(ii) any documentation and information produced by or received from or on behalf of the Council in relation to the Services and stored on whatever media;</li> </ul>
<b>“Court”</b>	means a court of competent jurisdiction within the United Kingdom and the European Court of Justice and acts or directions of the European Union Commission;
<b>“Criminal Records Checks”</b>	means one of four checks carried out (as appropriate) under the bureau established pursuant to the Protection of Freedoms Act 2012, <ul style="list-style-type: none"> <li>• Enhanced Disclosure with a Barred List Check</li> <li>• Enhanced Disclosure without a Barred List Check</li> <li>• Standard Disclosure</li> <li>• Basic Disclosure</li> </ul>
<b>“Cytotoxic and Cytostatic Medicines”</b>	means any medicine that displays one or more of the hazardous properties: Acute Toxicity (HP 6, Carcinogenic (HP 7), Toxic for Reproduction (HP 10) or Mutagenic (HP 11) which are classified within the List of Wastes (England) Regulations 2005/15.
<b>“Dangerous Goods Safety Advisor”</b>	means a certificated safety adviser to advise on the legal, safety and environmental aspects of the transport of dangerous goods.

<b>“Data Protection Authority”</b>	any organisation which is responsible for the supervision, promotion and enforcement of the Data Protection Legislation, including the Information Commissioner's Office (or any joint, like, replacement or successor organisation from time to time);
<b>“Data Protection Impact Assessment”</b>	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>“Data Protection Legislation”</b>	means all privacy laws applicable to the personal data which is processed under or in connection with this Agreement, including the DPA, The Data Protection (Charges and Information) Regulations 2018 and where applicable, 2002/58/EC Privacy and Electronic Communications Directive, and the GDPR (amongst others) as implemented by the applicable English and Welsh laws, including the DPA, or as directly applicable, and all regulations made pursuant to and in relation to such legislation together with all codes of practice and other statutory guidance on the foregoing issued by any relevant Data Protection Authority, all as amended, updated and/or replaced from time to time;
<b>“Depot”</b>	means the buildings and all related equipment owned by WCAs or their Service Contractors for the reception of waste;
<b>"Directives"</b>	means the EC Acquired Rights Directive 2001/23/EC (as amended)];
<b>“Direct Delivery” or “Directly Deliver(ed)”</b>	means the delivery of Waste to the Disposal/Treatment Facility by Waste Collection Authority (WCA) vehicles or vehicles belonging to WCA Service Contractors
<b>“Disclosure and Barring Service”</b>	is an executive agency of the Government providing criminal records disclosure services by way of a Basic Disclosure check for employers and voluntary sector organisations;
<b>“Discriminatory Change in Law”</b>	means a Change in Law, the terms of which will apply expressly to: <ul style="list-style-type: none"> <li>(a) this Contract and not to similar contracts procured under best value</li> <li>(b) the Contractor and not to other persons;</li> </ul>
<b>“Disposal” or “Dispose” or “Disposed” or “Disposed Of”</b>	means deposited at the appropriate point at the Disposal Facility and disposed in accordance with all relevant legislation.
<b>“Disposal Facility/Facilities”</b>	means a facility to which Clinical Waste is to be delivered from the Transfer Station or directly delivered by the WCA in accordance with all relevant legislation and where it is to be Disposed of or Treated by an approved method.
<b>“Dispute”</b>	means a disagreement between the WDA and/or the WCA and their service providers and the Contractor and/or their Sub Contractor

<b>“Dispute Resolution Procedure”</b>	means the procedure set out in <b>Condition 38</b> (Dispute Resolution) of this Contract;
<b>“DPA”</b>	means the Data Protection Act 2018;
<b>“Eligible Employees”</b>	means the Transferring Employees and /or Transferring Original Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer as cited in the Admission Agreement;
<b>“Environment Agency”</b>	means the authority defined as such by the Environment Act 1995;
<b>“Environment Agency Definitions”</b>	means the meaning of words or phrases as described by the Environment Agency either directly or via Waste Data Flow;
<b>“Environmental Permit”</b>	means the Environment Agency issued Environmental Permit or Waste Management License
<b>“Equipment”</b>	means the Contractor’s or the Council’s (as the case may be) equipment, plant, materials, and such other items supplied by the Contractor in the performance of its obligations under this Contract;
<b>“Expiry Date”</b>	means the date this Contract will expire in accordance with <b>Condition 3</b> (Duration of Contract);
<b>“Financial Quarter”</b>	means one of the four consecutive periods normally of 13 weeks making up the Council’s Financial Year;
<b>“Financial Year”</b>	means April 1 <sup>st</sup> of one year until March 31 <sup>st</sup> of the following year;
<b>“Framework Agreement Manager”</b>	means the representative appointed by the Council pursuant to <b>manage this Framework Agreement and whose name and contact details are notified to the Contractor</b> ;
<b>“Framework Period/Term”</b>	means the period during which this Framework Agreement is in force and in effect pursuant to <b>Condition 3</b> (Framework Period/Term)
<b>“Force Majeure Event”</b>	<p>means any event materially affecting the performance by a Party of its obligations under this Contract arising from any act, event, omission, happening or non-happening beyond its reasonable control including, but not limited to:</p> <ul style="list-style-type: none"> <li>• fire, flood, earthquake, windstorm or other natural disaster;</li> <li>• epidemic or pandemic;</li> <li>• terrorist attack;</li> <li>• nuclear, chemical or biological contamination;</li> <li>• compliance with any governmental order, governmental rule or governmental regulation which comes into effect after the Commencement Date;</li> <li>• loss at sea;</li> <li>• extreme adverse weather conditions;</li> <li>• interruption or failure of utility service;</li> </ul>

<b>“GDPR”</b>	means the General Data Protection Regulation as set out in Regulation (EC) 2016/679;
<b>“General Change in Law”</b>	means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;
<b>“Guarantee”</b>	means the parent company guarantee in the form set out in <b>Schedule 7</b> (Parent Company Guarantee);
<b>“Guarantor”</b>	means any person granting a Guarantee pursuant to <b>Clause 14</b> (Parent Company Guarantee);
<b>“Haulage”</b>	means the process of transporting Approved Waste from the Transfer Station to the Disposal/Treatment facility;
<b>“Household Waste”</b>	means waste in accordance for the time being with Section 75(5) of the Environmental Protection Act 1990.
<b>“Index” or “Indexation” or “Indices”</b>	means the Consumer Prices Index (CPI) published by the Office of National Statistics;
<b>“Infectious Waste”</b>	means waste that possesses the hazardous property ‘H9: Infectious’ – that is substances containing viable micro-organisms or their toxins, which are known, or reliably believed to cause disease in man or living organisms.
<b>“Initial Term”</b>	means the initial term of the Contract from the Commencement Date to 26 January 2023;
<b>“Instructions to Tenderers”</b>	means the instructions to tenderers issued by the Council and uploaded to eTendering system In-Tend for this Contract and attached as <b>Schedule 4</b> (Instructions to Tenders);
<b>“Intellectual Property Rights or IPR”</b>	means all intellectual and industrial property rights including patents, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;
<b>“Large Animal Remains”</b>	means a large animal killed on the road such as a deer or horse or equivalent;
<b>“Law”</b>	means but is not limited to any applicable Act of Parliament, statutory legislation, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bylaw, regulatory policy, guidance or industry code, judgment of a relevant Court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply. Any

	reference to "Legislation" shall be construed accordingly;
<b>"Lead Supplier"</b>	means, the Lead Supplier identified by a Consortium where the organisation that completes a tender (whether it is a single Organisation, Prime Contractor or a Consortium) are expressing a joint interest in the Contract as a Consortium. The Lead Supplier will be responsible for the overall preparation and submission of the tender on behalf of the Consortium and for addressing questions about the Organisation of the joint application;
<b>"Legacy Scheme"</b>	means the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer date;
<b>"Local Authority Collected Waste"</b>	means the waste collected by county, district and borough councils in the performance of their duties as Waste Disposal Authority and Waste Collection Authorities as defined in the Environmental Protection Act 1990;
<b>"Local Government Ombudsman"</b>	means a local commissioner (known as the Local Government Ombudsman) who is responsible for conducting investigations for the Commission for Local Administration in England (CLAE), which is a body of commissioners established under the Local Government Act 1974 and which, has the power to investigate complaints about councils (and certain other bodies) in England;
<b>"Management Information"</b>	means all paperwork and electronic data pertaining to delivery of the service, as may be required by the council;
<b>"Material Default"</b>	means any breach of <b>Condition 7</b> ( <i>Award Procedures</i> ), <b>Condition 11</b> ( <i>Safeguard Against Fraud</i> ), <b>Condition 14</b> ( <i>Statutory Requirements</i> ), <b>Condition 15</b> ( <i>Non-Discrimination</i> ), <b>Condition 17</b> ( <i>Provision of Management Information</i> ), <b>Condition 18</b> ( <i>Records and Audit Access</i> ), <b>Condition 21</b> ( <i>Data Protection</i> ), <b>Condition 22</b> ( <i>Freedom of Information</i> ) and <b>Condition 29</b> ( <i>Transfer and Sub-contracting</i> ) and with respect to any Party, a breach of any material term, condition, covenant or obligation of this Framework Agreement that is so material that it has the effect of abrogating such Party's performance and any other Party's enjoyment of the benefits under this Framework Agreement;
<b>"Medicinal Waste"</b>	means waste containing expired, split and contaminated pharmaceutical products, drugs, vaccines, and sera etc. that are no longer required. This also includes items used in the handling of pharmaceuticals, such as packaging contaminated with residues, gloves, masks, connecting tubing, syringe bodies and drug vials etc.
<b>"Mobilisation Period"</b>	means the period detailed in Mobilisation Plan;

<b>“Mobilisation Plan”</b>	means the plan developed by the Contractor to ensure efficient service delivery from the Commencement Date;
<b>“Month”</b>	means calendar month;
<b>“Normal Opening Hours”</b>	means any period in which the Transfer Station is open to receive Waste between the hours of 07.00 and 16.30 Monday to Friday and 07.00 and 12.30 on Saturdays
<b>“Offensive Waste”</b>	means waste that— (a) is not clinical waste, (b) contains body fluids, secretions or excretions, and (c) falls within code 18 01 04, 18 02 03 or 20 01 99 in Schedule 1 to— (i) the List of Wastes (England) Regulations 2005(d), in relation to England, or (ii) the List of Wastes (Wales) Regulations 2005(e), in relation to Wales;
<b>“Operational Date”</b>	means the date from which Approved Waste shall be permitted to enter the Disposal/Treatment Facility, agreed in writing between the Council and the Contractor;
<b>“Operational Equipment”</b>	means the provision of non-fixed equipment including plant, equipment (including computer equipment), vehicles, tools and all other items whatsoever necessary to comply with all requirements of the Contract;
<b>“Operations Manager”</b>	means the person appointed as such by the Contractor, the identity of whom is notified to the Council in writing by the Contractor;
<b>“Operational Period”</b>	means the period stated in Clause 3 (Duration of Contract);
<b>"Order"</b>	means an order for Services entered into between the Council for its own purposes and the Contractor in accordance with the Ordering Procedures and forming part of the Call Off Contract;
<b>“Order Form”</b>	the document used to place an Order and attached in <b>Schedule 9</b> (Order Form).
<b>"Ordering Procedures"</b>	means the ordering and award procedures specified in <b>Condition 7</b> (Award Procedures);
<b>“Organisation”</b>	means a Sole Proprietor, Partnership, Incorporated Company, Co-operative, Charity or Voluntary Organisation as appropriate;
<b>“Participating Bodies”</b>	means those bodies or organisations listed in the OJEU notice as Participating Bodies;
<b>“Participating Bodies Framework Manager”</b>	means the representative appointed by the Participating Body;
<b>“Party”</b>	means a party to this Contract and “Parties” shall be construed accordingly;

<b>“Persistent Breach”</b>	means where the Contractor commits the same (or similar) breach of the terms of this Contract at least three (3) times in any rolling three (3) Month period or at least six (6) times in any rolling twelve (12) Month period;
<b>“Personal Protection Equipment”</b>	means all Equipment used at work to protect against one or more risks to health and safety in accordance with the Personal Protective Equipment and Work Regulations 1992;
<b>“PPME”</b>	means pre procurement market engagement;
<b>“Pre-Existing IPR Rights”</b>	means any Intellectual Property Rights vested in or licensed to the Council or the Contractor prior to or independently of the performance by the Council or the Contractor prior to or independently of the performance by the Council or the Contractor of their obligations under the Contract and in respect of the Council includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs; or the Contractor of their obligations under the Contract and in respect of the Council includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
<b>“Prescribed Rate”</b>	means interest at the rate of eight percent (8%) per annum over the Bank of England Official Base Rate;
<b>“Price”</b>	means the contract price exclusive of any applicable tax, payable to the Contractor by the Council under this Contract for the full and proper performance of Services provided by the Contractor in accordance with this Contract, as set out in <b>Bid Form 15</b> within <b>Schedule 5</b> (Tender Response Document);
<b>“Prime Contractor”</b>	means the Lead Supplier of a multiple provider bid (i.e. a Prime Contractor with multiple Subcontractor / Significant Subcontractor arrangements) which does not intend to be part of, or form a Consortium;
<b>“Prohibited Act”</b>	<p>the following constitute prohibited acts:</p> <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: <ul style="list-style-type: none"> <li>i. induce that person to perform improperly a relevant function or activity; or</li> <li>ii. reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;</li> <li>(c) committing any offence: <ul style="list-style-type: none"> <li>i. under the Bribery Act;</li> <li>ii. under legislation creating offences concerning fraudulent acts;</li> </ul> </li> </ul>



- iii. at common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or
- iv. defrauding, attempting to defraud or conspiring to defraud the Council;

**“Qualifying Change in Law”**

means:

- (a) a Discriminatory Change in Law; or
- (b) a Specific Change in Law which was not foreseeable at the date of this Contract;

**“Rebate”**

means a payment made by the Contractor or Participating Body to reflect the price adjustment calculated by the annual reconciliation of bandings;

**“Record”**

means data;

**“Relevant Organisation”**

means:

- (a) Where a Tenderer is a single Organisation, that single Organisation;
- (b) Where the Tenderer is a Consortium, the Lead Supplier; each Consortium member and each Significant Subcontractor who accounts for more than 20% of the Annual Value; or
- (c) Where the Tenderer is a Prime Contractor, the Prime Contractor and each Significant Subcontractor who accounts for more than 20% of the minimum Annual Value;

**“Relevant Transfer”**

means a relevant transfer for the purposes of the TUPE Regulations;

**“Replacement Contractor”**

means any third party appointed by the Council from time to time to provide all or any of services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this Contract whether those services are provided by the Council internally and/or by any third party;

**“Request”**

shall have the meaning specified in **Condition 22** (Freedom of Information);

**“Review Date”**

means a date in October following the publication of September's agreed index in accordance with **Condition 13** (Prices for Services);

**“Schedules”**

means the Schedules attached to this Contract and detailed in the Form of Agreement;

**“Service(s)”**

means the Services to be provided pursuant to this Contract, more particularly described in the Specification and Service shall be construed accordingly;

**“Service Contractor(s)”**

means firms contracted to manage sites used for the bulking of Clinical Waste arising on the behalf of the WDA or WCA(s);

**“Service User(s)”**

means the WDA and all WCAs using the services provided in this contract;

<b>“Sharps Waste”</b>	means items that could cause cuts or puncture wounds. They include, but may not be limited to needles, hypodermic needles, scalpels and other blades, knives, infusion sets, saws, broken glass and nails.
<b>“Significant Sub-contractor”</b>	means where there is a subcontracting arrangement, each proposed subcontractor who accounts for more than 20% of the minimum Annual Value;
<b>“Site”</b>	means the land and other places on under in or through which the Services are to be provided and any other lands or places provided for the purposes of the Contract including the Transfer Station standing on the Site.
<b>“Small Animal Remains”</b>	means a small to medium sized animal killed on the road such as a fox or badger or domestic animal;
<b>“Specific Change in Law”</b>	means any Change in Law which specifically refers to the provision of a service being the same as or similar to the Services or to the holding of shares in companies whose main business is providing a service being the same as or similar to the Services;
<b>“Specification”</b>	means the description of the Services to be provided under this Contract in <b>Schedule 1</b> (Specification);
<b>“Staff”</b>	means all persons employed or engaged by the Contractor to perform this Contract together with the Contractor’s servants, suppliers, agents, volunteers and sub-contractors used in the performance of this Contract and/or the provision of the Services;
<b>“Sub-contractor”</b>	means the contractor’s that enter into a sub-contract with the Contractor
<b>“Standard Disclosure”</b>	means a type of Criminal Records Check for spent and unspent convictions, cautions, reprimands and final warnings, which is required where the role is included in the list of eligible roles detailed in the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975 and the role does not required an enhanced DBS check;
<b>“Sub-Contract”</b>	means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract;
<b>“Sub-contractor”</b>	means the contractor’s that enter into a sub-contract with the Contractor;
<b>“Technically Competent Manager”</b>	means a person employed by the Contractor who has relevant accreditation / qualification to provide the Service;
<b>“Tenderer(s)”</b>	means an organisation that completes a tender (whether it is a single Organisation, Prime Contractor or a Consortium);

<b>“Tender Response Document”</b>	means the Contractor’s proposal to meet the Specification setting out the methods to be used by the Contractor to provide the Services under this Contract as set out in <b>Schedule 5</b> (Tender Response Document);
<b>“Terminal Breach”</b>	means a breach of this contract by the Contractor that causes the Council to breach their Environmental Permit for the storage of clinical waste;
<b>“TUPE Regulations”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or modified from time to time);
<b>“Tonne”</b>	means a metric tonne of 1,000 kilograms;
<b>“Trading Standards Officer”</b>	means an officer employed by the regulatory authority in order to advise on and enforce laws that govern the way that goods and services are bought, sold and hired;
<b>“Transfer”</b>	means to load Approved Waste deposited at the Transfer Station into the Contractor’s Vehicle for Transportation to the Disposal/Treatment Facility;
<b>“Transfer Station”</b>	means a facility used to bulk waste for onward Disposal or Treatment;
<b>“Transfer Station Contractor”</b>	means the Contractor responsible for operating the Transfer Station;
<b>“Transfer Station Operator”</b>	means the site manager;
<b>“Transport”</b>	means to transport fully loaded Containers in accordance with relevant legislation in a Contractor’s Vehicle to a Disposal Facility for Disposal or Treatment and “Transportation” and “Transporting” shall be construed accordingly;
<b>“Treat” or Treatment” or “Treated”</b>	means deposited at the appropriate point at the Disposal Facility and treated in accordance with all relevant legislation pertaining to the disposal of Waste.
<b>“Treatment Facility”</b>	means a facility to which Clinical Waste is to be delivered from the Transfer Station or directly delivered by the WCA in accordance with all relevant legislation and where it is to be Treated by an approved method;
<b>“Turnover Threshold”</b>	means £200,000 (two (2) times the Annual Value of the Framework Agreement for Hertfordshire County Council only);
<b>“VAT”</b>	means value added tax charged under the Value Added Tax Act 1994 or any similar tax from time to time replacing it or performing a similar fiscal function;

<b>“Variation”</b>	means any change to: i. the terms and Conditions of Contract or Schedules ii. the Services or any of them iii. the standard of performance required of a Party materially over and above that expressly stated or provided for under this Contract provided such variation or change is in accordance with <b>Clause 5</b> (Variations) ;
<b>“Waste”</b>	means: i. Clinical Waste, ii. Offensive Waste, iii. Infectious Waste, iv. Sharps Waste; v. Cytotoxic and Cytostatic Medicines; vi. Medicinal Waste, vii. Amalgam Waste, viii. Small Animal Remains and ix. Large Animal Remains which is collected or accumulated by or on behalf of any local authority in pursuance of any of its activities or statutory functions as Waste Collection or Waste Disposal Authority and authorised by the Council for Disposal or Treatment under the Contract.
<b>“Waste Carrier”</b>	Person authorised to carry waste by the Environment Agency England and Wales;
<b>“Waste Collection Authority”  (“WCA”)</b>	means any authority defined as such by the Environment Protection Act 1990;
<b>“Waste Disposal Authority” (“WDA”)</b>	means any authority defined as such by the Environment Protection Act 1990;
<b>“Weigh(s)”</b>	means to weigh vehicles using a weighbridge and /or weigh Containers using scales certified by a trading standards officer;
<b>“Working Day”</b>	means Monday to Friday excluding public and bank holidays in England and Wales;
<b>“Working Hours”</b>	means 07:00 to 16:30.

- 1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:-
  - 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - 1.2.2 words importing the masculine include the feminine and the neuter;
  - 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
  - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.7 references in this Framework Agreement to any condition or sub-condition or Schedule without further designation shall be construed as a reference to the condition or sub-condition or Schedule to this Framework Agreement so numbered;
- 1.2.8 references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered;
- 1.2.9 reference to a Condition is a reference to the whole of that Condition unless stated otherwise; and
- 1.2.10 in the event and to the extent only of any conflict between the Conditions and the remainder of the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.2.10.1 Clarification responses provided by the Council;
- 1.2.10.2 these Conditions;
- 1.2.10.3 Schedule 1 (the Services);
- 1.2.10.4 the Schedules 2-7 (inclusive) and Schedules 9-10 (inclusive);
- 1.2.10.5 **Schedule 8 (Clarification responses provided by the Contractor).**

*[This condition is to be finalised after contract award depending on whether there are clarification questions and responses]*

- 1.2.11 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail.

## **2. STATEMENT OF INTENT**

- 2.1 The Contractor has been appointed and the Council has entered into this Framework Agreement on the basis of the ITT and, in particular, the representations made by the Contractor to the Council in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- 2.2 **Condition 2** is an introduction to this Framework Agreement and does not expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions of this Framework Agreement, except and to the extent that those terms and conditions do not address a particular circumstance, or are otherwise ambiguous, in which case those terms and conditions are to be interpreted and construed so as to give full effect to **Condition 2**.

## **PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE**

### **3. FRAMEWORK PERIOD/TERM**

- 3.1 The Framework Agreement shall take effect on the Commencement Date and shall terminate on 26 January 2023 (unless it is otherwise terminated earlier in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated).
- 3.2 Subject to the Contractor satisfactorily performing its obligations under the Framework Agreement during the three (3) years from the Commencement Date, the Council may at its absolute discretion extend the Framework Period/Term by giving at least six (6) months' prior notice in writing for a further one (1) period of twelve (12) months, the Framework Period/Term as so extended shall not subsist beyond the fourth (4<sup>th</sup>) anniversary of the Commencement Date.

### **4. SCOPE OF FRAMEWORK AGREEMENT**

- 4.1 This Framework Agreement governs the relationship between the Council and the Contractor in respect of the appointment of the Contractor onto the Framework Agreement.
- 4.2 The Council and any Participating Body (subject to the following provisions of this **Condition 4.2**) may at its own absolute discretion and from time to time Order Services from the Contractor in accordance with the Ordering Procedure during the Framework Period/Term. The Parties acknowledge and agree that Participating Bodies have the right to Order Services pursuant to this Framework Agreement provided that they comply at all times with all Laws (including, but not limited to, the Regulations and the Guidance) and the Ordering Procedure.
- 4.3 The maximum duration of any Call-Off Agreement pursuant to this Framework Agreement is four (4) years.
- 4.4 The Contractor acknowledges that there is no obligation for the Council or any Participating Body to purchase any Services from the Contractor during the Term.
- 4.5 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the Services to be ordered by the Council or any Participating Body (if any) pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
- 4.6 The Council shall not in any circumstances be liable to the Contractor or any Participating Body for payment or otherwise in respect of any Services provided by the Contractor to any Participating Body.

### **5. CONTRACTOR'S APPOINTMENT**

- 5.1 The Council has appointed the Contractor as a potential contractor of the Services and the Contractor shall be eligible to be considered for the award of Orders for such Services by the Council during the Framework Period/Term.

### **6. NON-EXCLUSIVITY**

- 6.1 The Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been guaranteed by the Council (or by any Participating Body (if any)) for Services from the Contractor and that the Council and the Participating Bodies are at all times entitled to enter into other contracts and arrangements with other contractors for the provision of any or all services which are the same as or similar to the Services.

## **7. AWARD PROCEDURES**

### **Awards under the Framework Agreement**

- 7.1 The Council shall be entitled at any time during the Framework Period/Term to place an Order for Services from the Contractor by serving an Order in accordance with the Ordering Procedures as detailed in **Condition 7.2 and 7.3** below and **Appendix 1**. Any Participating Body shall be entitled at any time during the Framework Period/Term to place an Order for Services from the Contractor by serving an Order in accordance with the Ordering Procedures as detailed in **Condition 7.3** below and **Appendix 1**.

### **Direct Award Cascade**

- 7.2 This method can be used by the Council if:
- 7.2.1 the required service requirements can be met by the Specification contained in Schedule 1;
  - 7.2.2 the Council or any Participating Body can demonstrate that the selected Contractor demonstrates best value for money; and
  - 7.2.3 all of the terms of the proposed Call-Off Contract are laid down in this Framework Agreement and the Call-Off Contract terms do not require amendment or any supplementary terms and conditions.

The Council will order Services from the highest scoring/ranked tenderer awarded to the Framework Agreement (during the tender stage) in the first instance. Participating Bodies will order Services from the Framework Agreement using **Condition 7.3**

### **Competed Services**

- 7.3 Where the **Conditions 7.2** above are not met or where the Council so elects, or on all occasions in which a Participating Body wishes to call-off services under this Framework Agreement, a mini-competition between all contractors appointed to the Framework Agreement, shall be carried out. The Council's Framework Agreement Manager or their delegated representative will contact all appropriate contractors to obtain best current prices. Mini tenders will be evaluated using the following criteria;

**Price**                      **range from 60% - 100%**

**Quality**                    **range from 0% - 40%**

Weightings and sub-criteria will be identified at the mini tender stage.

In any event the Council accepts no responsibility for the chosen contracting method of any of the Participating Bodies who utilise the Framework Agreement.

- 7.4 The Contractor shall not accept an Order except in accordance with the Ordering Procedures. For the avoidance of doubt, the Contractor may refuse an Order in accordance with the Ordering Procedures.
- 7.5 The Council and the Contractor agree that any document or communication, including a document or communication in the apparent form of an Order, which:
- 7.5.1 relates to services which are outside the scope of the Services covered by the object or description of the Framework Agreement in the OJEU Contract Notice advertisement; and/or
  - 7.5.2 does not contain all of the information listed in the Schedule 9;
- shall not constitute an Order under this Framework Agreement. If the Contractor commences work under any such Order it does so at its own risk.

- 7.6 Upon receipt of an Order the Contractor shall, within the timescale agreed in **Schedule 9**, either
- 7.6.1 acknowledge in writing (which, for the purposes of this **Condition 7.6** shall include email) receipt of the Order from the Council (or the Participating Body as the case may be) and state that it is unable to fulfil the Order; or
  - 7.6.2 acknowledge in writing (which, for the purposes of this **Condition 7.6** shall include email) receipt of that Order from the Council (or the Participating Body as the case may be) and state its acceptance of that Order.
- 7.7 In the event that the Contractor accepts the Order in accordance with the provisions of **Condition 7.6.2**, the Contractor shall, simultaneously with that acceptance:
- 7.7.1 in accordance with the option stated on the Order, either send the Call-Off Contract duly executed by an authorised officer of the Contractor to the Council (or the Participating Body), or send to the Council (or Participating Body) a statement that a Call-Off Contract has been formed using the terms and conditions in the Framework Agreement, augmented by the information provided in the Order, such information being replicated or referenced in that statement.
- 7.8 If the Contractor wishes to query any matter in relation to an Order served on it by the Council or a Participating Body, the Contractor shall raise the matter with the Council's Framework Agreement Manager (or Participating Body's representative) as soon as practicable.
- 7.9 A binding agreement for the provision of the Ordered Services shall be formed on the earlier of commencement of the Services or the Council's/ Participating Body's receipt of a copy of the confirmation Order.
- 7.10 The Contractor acknowledges that each Participating Body is independently responsible for the conduct of the Ordering Procedure under the Framework Agreement and that the Council is not responsible or accountable for and shall have no liability whatsoever in relation to:-
- 7.10.1 the conduct of Participating Bodies in relation to the Framework Agreement; or
  - 7.10.2 the performance or non-performance of any Call-Off Contracts and/ or Orders between the Contractor and a Participating Body entered into pursuant to the Framework Agreement.

## **PART TWO: CONTRACTOR'S GENERAL FRAMEWORK OBLIGATIONS**

### **8. WARRANTIES AND REPRESENTATIONS**

- 8.1 The Contractor warrants and represents to the Council that:-
- 8.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company, if any) to enter into and to perform its obligations under this Framework Agreement;
  - 8.1.2 this Framework Agreement is executed by a duly Authorised Representative of the Contractor;
  - 8.1.3 in entering into this Framework Agreement or any Call-Off Contract it has not committed any Fraud;



- 8.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Framework Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 8.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Framework Agreement;
- 8.1.6 it has not caused or induced any person to enter such agreement referred to in **Condition 8.1.5** above;
- 8.1.7 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under the Framework Agreement;
- 8.1.8 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916 and/or the Bribery Act;
- 8.1.9 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract;
- 8.1.10 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract;
- 8.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and
- 8.1.12 in the three (3) years prior to the date of this Framework Agreement:-
- 8.1.12.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- 8.1.12.2 it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
- 8.1.12.3 it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Contractor's position as an on-going business concern or its ability to fulfil its obligations under this Framework Agreement.

### **Pre-Employment Checks**

- 8.2. The Contractor shall carry out appropriate pre-employment checks prior to the appointment of an individual in connection with the Services (including but not limited to references, medical clearance, proof of right to work in the UK, professional registration/qualifications and the issuing of a satisfactory Disclosure and Barring Certificate by the Disclosure and Barring Service, where relevant). Prior to making any offer of employment, the Contractor shall carry out a risk assessment in a form equal to or exceeding the risk assessment form found using the link <https://www.hertfordshire.gov.uk/services/childrens-social-care/child-protection/hertfordshire-safeguarding-children-board/professionals-and-volunteers/professionals-and-volunteers.aspx> in relation to any non-UK citizen and

any UK citizen who requires a Criminal Records Check and who has lived abroad for six (6) months or more in the five (5) year period prior to being considered for appointment in connection with the Services.

- 8.3** The Contractor shall obtain consent prior to the commencement of any work by any Staff member employed to work in connection with this Contract, to carry out all necessary checks under Clause 8.2 and shall obtain consent of the Staff member to provide evidence upon the request of the Council that such checks have been carried out.
- 8.4** Without affecting the Contractor's rights and obligations as an employer, the Council or the Contract Manager may, to the extent reasonably necessary to protect the standards and reputation of the Council and following consultation with the Contractor, request the Contractor to remove from the Services or relevant part of it any person or member of Staff (including the Contractor's Authorised Representative) and the Contractor shall forthwith comply with such request. The Council shall not in any circumstances be liable to any such person or member of Staff or to the Contractor in relation to any such removal, and the Contractor shall fully and promptly indemnify the Council in respect of any claims brought by any such person or member of Staff arising from it.
- 8.5** The Contractor through monitoring of its compliance with this Clause 8.2 to 8.10 shall ensure that the Council is kept advised at all times of any Staff member who, subsequent to his/her commencement of and during employment as a Staff member, commits any criminal act whatsoever or whose previous convictions become known to the Contractor or commits any act which puts or could put users of the Service or the Council at risk.

#### **Offer of Employment**

- 8.6** The Contractor shall not, for the Contract Period or a period of twelve (12) months afterwards, employ or offer employment to any of the Council's employees and/or personnel who have been associated with the procurement and/or the contract management of the Services. This Clause shall not affect an offer of employment which results from a response by the employee and/or personnel member to any public advertisement.

#### **Status of Staff**

- 8.7** This Contract constitutes a contract for the provision of services and not a contract of employment.
- 8.8** For the avoidance of doubt, the Parties do not intend Staff working on or for this Contract to be off-payroll working through an intermediary for the purposes of IR35. The Contractor must promptly notify the Council in writing if the status of any Staff changes in the case where they fall within IR35.
- 8.9** The Council may at its absolute discretion request from the Contractor or Sub-Contractor at any time throughout the Contract Period until six (6) years after the Contract has been terminated, information in order to determine whether Staff fall within IR35. The Contractor or Sub-Contractor shall provide the requested information promptly and in sufficient detail to the satisfaction of the Council.
- 8.10** The Contractor shall be liable for and shall fully and promptly indemnify and keep indemnified the Council for and in respect of:
- 8.10.1** any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where recovery is not prohibited by law;
  - 8.10.2** all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and

- 8.10.3 any liability arising from any employment related claim or any claim based on worker status or IR35 (including reasonable costs and expenses) brought by the Contractor or Sub-Contractor against the Council arising out or in connection with the provision of the Services.

## **9. BRIBERY AND CORRUPTION**

- 9.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council or any other public body or person employed by or on behalf of the Council or any other public body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Call-Off Contract or any other contract with the Council or any other public body or person employed by or on behalf of the Council or any other public body (including its award to the Contractor, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916 and under the Bribery Act.
- 9.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to the Council or any other public body or any person employed by or on behalf of the Council or any other public body in connection with this Framework Agreement, any Call-Off Contract or any other contract with the Council or any other public body or person employed by or on behalf of the Council or any other public body.
- 9.3 The Contractor:
- 9.3.1 shall not, and shall procure that its Staff shall not, in connection with this Contract commit a Prohibited Act; and
- 9.3.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.
- 9.4 The Contractor shall if requested, provide the Council with any reasonable assistance, at the reasonable cost of the Council, to enable the Council to perform any activity required by any relevant government or agency for the purpose of compliance with the Bribery Act.
- 9.5 The Contractor shall have an anti-bribery policy.
- 9.6 The Council shall be entitled to immediately terminate the Framework Agreement or any part of it and to recover from the Contractor the amount of any loss resulting, plus the value of any gift or consideration if in relation to the Framework Agreement or any other contract with the Council the Contractor and or any of its Staff:-
- 9.6.1 (whether with or without that Contractor's knowledge) shall have offered, or given, or agreed to give, to any person, any gift, or consideration, inducement or reward of any kind, for doing or not doing any action (except in accordance with a permitted and lawful subcontract), or
- 9.6.2 committed any offence under the Prevention of Corruption Acts 1889 to 1916 and/or Bribery Act 2010; or
- 9.6.3 given any fee or reward, the receipt of which is an offence under Section 117 (2) of the Local Government Act, 1972.
- 9.7 If any breach of this **Condition 9** is suspected or known, the Contractor must notify the Council immediately.

9.8 The Contractor must respond promptly to the Council's enquiries, co-operate with any investigation in relation to **Condition 9** including allowing the Council to audit books, records and any other relevant documentation.

9.9 If the Contractor, its Staff or any person acting on the Contractor's behalf, engages in conduct prohibited by **Conditions 9.1-9.6 (inclusive)** above or commits any offence under the Prevention of Corruption Acts 1889 to 1916 and/or Bribery Act the Council may:-

9.9.1 terminate the Framework Agreement with immediate effect by giving notice in writing to the Contractor and the Council may recover from the Contractor the amount of any loss suffered by the Council resulting from the termination; or

9.9.2 recover in full from the Contractor and the Contractor shall indemnify the Council in full from and against any other loss sustained by that Council in consequence of any breach of this Condition, whether or not the Framework Agreement has been terminated.

## **10. CONFLICTS OF INTEREST**

10.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of the Council) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to the Council under the provisions of this Framework Agreement or any Call-Off Contract.

10.2 The Contractor shall promptly notify and provide full particulars to the Council if such conflict referred to in **Condition 10.1** above arises or is reasonably foreseeable to arise.

10.3 The Council reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of this Framework Agreement or any Call-Off Contract. The action of the Council pursuant to this Condition shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

10.4 This **Condition** shall apply during the Framework Period/Term and any subsequent extension(s) for a period of two (2) years after its termination or expiry.

## **11. SAFEGUARD AGAINST FRAUD**

11.1 The Contractor shall safeguard the Council funding of the Framework Agreement and any Call-Off Contract against fraud generally and, in particular, fraud on the part of the Contractor or its Staff. The Contractor shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

## **12. CALL-OFF CONTRACT PERFORMANCE**

12.1 The Contractor shall perform all Call-Off Contracts in accordance with:-

12.1.1 the requirements of this Framework Agreement; and

12.1.2 the terms and conditions of the respective Call-Off Contract, and Order Form.

### **13. PRICES FOR SERVICES AND FINANCIAL ARRANGEMENTS**

- 13.1 The prices offered by the Contractor for a Call-Off Contract for Services shall be the prices contained in the Contractor's Tender attached at Schedule 5.
- 13.2 The prices offered by the Contractor for Orders placed following a mini competition in accordance with **Schedule 9** shall not exceed the prices set out in the Pricing Schedule (**Schedule 5**) and tendered in accordance with the requirements of the mini competition held pursuant to **Schedule 8**.
- 13.3 The Council requires a banded approach to the prices offered by the Contractor as set out in the Pricing Schedule (**Schedule 5**), this is based on the total annual tonnes of Waste Disposed Of/Treated through the Contractor under this Framework Agreement. Should the annual tonnage change for any reason, either due to an increase or reduction in tonnage supplied by the Council or via Call-Off Contracts with one or more Participating Body, to a point where the total annual tonnage for that Waste type moves into a different price per tonne banding then that price per tonne banding will be applicable to all users of the Framework who are using that Contractor for all tonnages of Waste Disposed Of/Treated in each financial year. Regardless of if the Waste is Collected or Directly Delivered.
- 13.4 The pricing mechanism in accordance with **Condition 13.3** will be administrated by the Council on behalf of all Participating Bodies. The annual tonnage of each Waste type Disposed Of/Treated by each Contractor participating in the Framework will be monitored on an annual basis by the Council in accordance with **Schedule 2** (Performance Monitoring/KPI's). Participating Bodies will be notified by the Council of which price per tonne banding for each Waste type they fall within so they can arrange for a rebate or pay an additional charge directly with the appropriate Contractor.
- 13.5 Participating Bodies affected by a change in the price per tonne will either receive a Rebate or pay an additional charge for the applicable period at the beginning of the following Accounting Period. An applied example of the price mechanism is set out within the section headed "Stage 3A – Price" of the Tender Response Document.

#### **Price Review**

- 13.6 The Price will remain fixed for the first fourteen (14) months of the Framework. The Price may be reviewed on an annual basis on the Review Date. Such Price review shall be carried out in accordance with **Conditions 13.6 to 13.11** (inclusive) if requested by either Party to the Framework Agreement.
- 13.7 The Council reserves the right to request a reduction in price if the CPI or any other index which has been agreed between the Parties results in a deflationary rate in accordance with the formula specified in **Condition 13.11**.
- 13.8 The Contractor may request an adjustment to the Price provided that:
- 13.8.1 there is a maximum of one (1) request per annum;
- 13.8.2 any request is made in writing;
- 13.8.3 documentary evidence is presented to support such a request;
- 13.8.4 the request follows the formula specified in **Condition 13.11**;
- 13.8.5 the change to Price does not constitute a material change.
- 13.9 Any request made under **Condition 13.6** must be received by the Framework Agreement Manager for consideration on the Review Date. If approved by the Council the adjustment to the Price will come into effect on the annual anniversary of the Commencement Date and will remain fixed for twelve (12) months thereafter.

- 13.10 When considering a request under **Condition 13.6** the Council will have regard to the general level of competitiveness of the market as any price adjustments agreed during the Framework Agreement Period should result in prices equally competitive in the current situation as at the time of tender.
- 13.11 No price adjustment requested under **Condition 13.6** will be higher than the CPI, or other index agreed by the Parties, in the year in which the price adjustment was considered, unless there are exceptional circumstances which must be supported by documentary evidence subject to the approval of the Council. Adjustments to rates in accordance with movements in CPI or other agreed index may also be deflationary resulting in reduction in rates. CPI has been used in the following example.

**Indexation of Price – example of formula to be used**

**Formula**

The request follows the formula and the result is subsequently agreed by the Council.

$$P_n = P \times (1 + (\text{CPI}_n - \text{CPI}_{n-1}) / \text{CPI}_{n-1})$$

P = the annual price at the Contract Commencement Date

P<sub>n</sub> = the annual price at the Contract Commencement Date plus any increase/decrease due to the application of the Indexation formula.

CPI<sub>n</sub> = the Consumer Price Index for September 2020. This is published in October by the ONS, or as appropriate.

CPI<sub>n-1</sub> = the Consumer Price Index for September 2019. This is published in October by the ONS, or as appropriate.

**14. STATUTORY REQUIREMENTS**

- 14.1 The Contractor shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Call-Off Contract.

**15. NON-DISCRIMINATION**

- 15.1 The Contractor shall comply with the Equality Act 2010 and shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, gender reassignment, marriage or civil partnership, age, pregnancy or maternity, human rights or otherwise).
- 15.2 The Contractor shall take all reasonable steps to secure the observance of **Condition 15.1** by all of its Staff appointed in the connection with the Framework Agreement and any Call-Off Contract.

**16. BEST VALUE**

- 16.1 The Contractor acknowledges the Best Value Duty of the Council and shall throughout the Framework Period/Term in the performance of its obligations under this Framework Agreement and any Call-Off Contract, make arrangements to endeavour to secure continuous improvement in the way in which the Services are provided, having regard to economy, efficiency and effectiveness.

### PART THREE: CONTRACTOR'S INFORMATION OBLIGATIONS

#### 17. PROVISION OF MANAGEMENT INFORMATION

- 17.1 The Contractor shall submit Management Information to the Council in the form notified by the Council in writing throughout the Framework Period/Term at the frequency specified in the Specification.
- 17.2 The Council may make changes to the Management Information which the Contractor is required to supply and shall give the Contractor at least one (1) month's written notice of any changes and thereafter the Contractor shall supply the Management Information accordingly.

#### 18. RECORDS AND AUDIT ACCESS

- 18.1 The Contractor shall keep and maintain until twelve (12) years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Call-Off Contracts entered into with the Council and the amounts paid by the Council.
- 18.2 The Contractor shall keep the records and accounts referred to in **Condition 18.1** above in accordance with good accountancy practice.
- 18.3 The Contractor shall afford the Council and/or the Auditor such access to such records and accounts as may be required from time to time.
- 18.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Framework Period/Term and for a period of six (6) years after expiry of the Framework Period/Term to the Council and the Auditor.
- 18.5 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Services pursuant to the Call-Off Contract, save insofar as control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.
- 18.6 Subject to the Council's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:-
- 18.6.1 all information requested by the Auditor within the scope of the Audit;
  - 18.6.2 reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Services; and
  - 18.6.3 access to the Staff.
- 18.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this **Condition 18**, unless the Audit reveals a Material Default by the Contractor in which case the Contractor shall reimburse the Council for the Council's own reasonable costs incurred in relation to the Audit.
- #### 19. CONFIDENTIALITY
- 19.1 The Parties to this Framework Agreement each agree to keep confidential all information that ought to be considered as confidential that is shared between them (however it is conveyed or on whatever media it is stored) in relation to the Service and/or the Service User.

- 19.2 Each Party:
- 19.2.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
  - 19.2.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.
- 19.3 The Contractor shall ensure that its Staff are aware of the Contractor's confidentiality obligations under this Framework Agreement.
- 19.4 The Contractor and/or its Staff shall not use any Confidential Information it receives from the Council (or from any Participating Body) otherwise than for the purposes of this Framework Agreement.
- 19.5 The foregoing restriction set out in **Condition 19.2** relating to Confidential Information shall not apply to:
- 19.5.1 information which at the time of disclosure is generally available to the public other than by breach of this **Condition 19** by the Council;
  - 19.5.2 information which is in possession of the disclosing party (without restrictions) before the date on which the disclosing party received that information as a result of or in connection with this Framework Agreement ;
  - 19.5.3 information which is required to be disclosed by Law and/or compliance with a Court order;
  - 19.5.4 information which is reasonably required by any person engaged in the performance of their obligations in relation to the Framework Agreement for the performance of those obligations.
- 19.6 The Council shall not disclose information, which has been forwarded to it by the Contractor and designated by the Contractor as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of the Tender Response Document.
- 19.6.1 **Condition 19.6** is without prejudice to -:
- 19.6.1.1 any other provision in Regulation 21 of Public Contract Regulations 2015, including the obligations relating to the advertising of awarded contracts and the provision of information to candidates and tenderers set out in Regulations 50 and 50 of the Public Contracts Regulations 215 respectively; or
  - 19.6.1.2 for the purpose of the examination and certification of the Council's accounts; or
  - 19.6.1.3 for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency, and effectiveness with which the Council has used its resources; or
  - 19.6.1.4 to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is Confidential Information and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or



19.6.1.5 to any person engaged in providing any services to the Council for any purpose relating to or ancillary to this Contract provided that in disclosing information the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate; or

19.6.1.6 the FOIA and/or Environmental Information Regulations; or

19.6.1.7 any other requirement, or permission, for the disclosure of information that is applicable under the law of England and Wales or, as the case may be, Northern Ireland.

19.7 At the written request of the Council, the Contractor shall procure that those members of Staff identified in the Council's notice and who are not otherwise subject to confidentiality obligations commensurate with this **Condition 19** sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

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

## **20. NOT USED**

## **21. DATA PROTECTION**

21.1 The Parties shall comply with their obligations under Data Protection Legislation at all times.

### **Information Governance – General Responsibilities**

21.2 The Contractor acknowledges that it will comply with Data Protection Legislation which includes GDPR and the DPA.

21.3 For the purposes of this clause, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA and the GDPR.

21.4 The Parties also acknowledge their respective obligations arising under the DPA and GDPR and must assist each other as necessary to enable each other to comply with these obligations.

21.5 The Contractor undertakes to:

21.5.1 treat as confidential all Personal Data which may be derived from or be obtained in the course of the Services or which may come into the possession of the Contractor or a Staff member, servant or agent or Sub-Contractor of the Contractor as a result or in connection with the Services;

21.5.2 provide all necessary precautions to ensure that all such information is treated as confidential by the Contractor, its Staff members, servants, agents or Sub-Contractors;

21.5.3 ensure that it, its Staff members, servants, agents and Sub-Contractors are aware of the provisions of the DPA and GDPR and that any personal information obtained in the course of the performance of this contract shall not be disclosed or used in any unlawful manner;

21.5.4 indemnify the Council against any loss arising under the DPA and GDPR caused by any action, authorised or unauthorised, taken by the Contractor, its Staff members, servants, agents or Sub-Contractors; and

- 21.5.5 have in place adequate mechanisms to ensure that Sub-Contractors, agents and subsidiaries to whom personal information is disclosed comply with their obligations under this Contract to keep Personal Data and information secure and confidential in accordance with Data Protection Legislation.

#### **The Contractor as Data Processor**

- 21.6 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and GDPR and each of the Parties will duly observe all their obligations under the DPA and GDPR which arise in connection with this Agreement.

- 21.7 Notwithstanding the general obligations in clauses 25.1 to 25.5 above, where the Contractor is processing Personal Data as a Data Processor for the Council the Contractor shall:

- 21.7.1 process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Council in writing;

- 21.7.2 comply with all applicable Laws;

- 21.7.3 process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under this Contract or as is required by Law or any regulatory body;

- 21.7.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- 21.7.5 ensure that it is able to demonstrate that Staff members, servants, agents or Sub-Contractors associated with the performance of this Contract are aware of their personal responsibilities under the DPA and GDPR to maintain the security of the Personal Data controlled by the Council;

- 21.7.6 take reasonable steps to ensure the reliability of its Staff, servants, agents and Sub-Contractors who may have access to the Personal Data;

- 21.7.7 ensure that Personal Data is not be copied for any purpose other than that agreed with the Council; and

- 21.7.8 ensure that Personal Data shall be deleted or returned to the Council at the end of this Contract or when requested by the Council. Such instruction to be made in writing.

- 21.8 The Contractor shall permit the Council (subject to reasonable and appropriate confidentiality requirements), to inspect and audit the Contractor's data processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and shall comply with all reasonable requests or directions by the Council to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract.

- 21.9** The Contractor shall:

- 21.9.1 not Process, cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior written consent of the Council;

- 21.9.2 ensure that all Staff, servants, agents and Sub-Contractors required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 21;
- 21.9.3 ensure that none of the Staff, servants, agents and Sub-Contractors publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Council;
- 21.9.4 not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Council or in compliance with a legal obligation imposed upon the Council;
- 21.9.5 taking into account the nature of the processing, provide the Council will full assistance in relation to the Council's obligations to respond to requests from data subjects exercising their rights laid down in Chapter III of the GDPR and shall notify the Council within two (2) Working Days:
  - 21.9.5.1 if it receives a request from a Data Subject to have access to that person's Personal Data; or
  - 21.9.5.2 if it receives a complaint or request relating to the Council's obligations under the DPA or GDPR;
- 21.9.6 notify the Council and the Data Protection Authority without undue delay of any Personal Data Breach or potential Personal Data Breach.
- 21.10 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 21.11 The Contractor agrees to indemnify and keep indemnified and defend at its own expense the Council against all costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Contractor or its Staff members, servants, agents or Sub-Contractors to comply with any of its obligations under this Clause.

#### **Responsibilities when engaging sub-contractors**

- 21.12 Subject to the Council's prior written consent, if the Contractor is to require any Sub-Contractor to process Personal Data on its behalf, the Contractor must ensure that the Sub-Contractor contracts on terms which are substantially the same as those set out in this Clause.
- 25.13 The provision of this Clause 21 shall apply for the duration of the Contract and indefinitely after its expiry.

#### **22. FREEDOM OF INFORMATION**

- 22.1 The Contractor acknowledges that each the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its own Information disclosure obligations.
- 22.2 In relation to the Framework Agreement, the Contractor shall and shall procure that its Staff shall:
  - 22.2.1 transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

- 22.2.2 provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within three (3) Working Days (or such other period as the Council may specify) of the Council's request; and
  - 22.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 22.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 22.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 22.5 The Contractor acknowledges that (notwithstanding the provisions of **Condition 22.2**) the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
  - 22.5.1 in certain circumstances without consulting the Contractor; or
  - 22.5.2 following consultation with the Contractor and having taken their views into account;
  - 22.5.3 in circumstances beyond the control the Council;
  - 22.5.4 provided always that where **Condition 22.2** applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

## **23. PUBLICITY**

- 23.1 Unless otherwise directed by the Council, the Contractor shall not make any press announcements or publicise this Framework Agreement in any way without the Council's prior written consent.
- 23.2 The Council shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon it, including any examination of this Framework Agreement by the Auditor or otherwise.
- 23.3 The Contractor shall not do anything which may damage the reputation of the Council or bring the Council into disrepute.

## **PART FOUR: FRAMEWORK AGREEMENT TERMINATION**

### **24. TERMINATION**

#### **Termination on Default**

24.1 The Council may terminate the Framework Agreement by serving written notice on the Contractor with effect from the date specified in such notice:-

24.1.1 where the Contractor commits a Material Default and:-

24.1.1.1 the Contractor has not remedied the Material Default to the satisfaction of the Council within twenty (20) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Material Default and requesting it to be remedied; or where

24.1.1.2 the Material Default is not, in the reasonable opinion of the Council, capable of remedy; or

24.1.2 where the Council terminates its Call-Off Contract awarded to the Contractor under this Framework Agreement as a consequence of Default (as defined in the Call-Off Contract) by the Contractor.

24.2 The Council may terminate the Framework Agreement along with any associated Call Off Contract if the Contractor commits a Termination Breach.

#### **Termination on Financial Standing**

24.3 The Council may terminate the Framework Agreement by serving notice on the Contractor in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which adversely impacts on the Contractor's ability to supply Services under this Framework Agreement.

#### **Termination on Insolvency and Change of Control**

24.4 The Council may terminate this Framework Agreement with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:-

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

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

24.4.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or

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

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

- 24.4.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- 24.4.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 24.4.8 any event similar to those listed in **Condition 24.4.1** to **Condition 24.4.7** occurs under the law of any other jurisdiction.
- 24.5 The Contractor shall notify the Council immediately if the Contractor undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Council may terminate the Framework Agreement by giving notice in writing to the Contractor with immediate effect within three (3) Months of:-
- 24.5.1 being notified that a Change of Control has occurred; or
- 24.5.2 where no notification has been made, the date that the Council becomes aware of the Change of Control;
- but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 24.6 The Council at its sole discretion may appoint a Replacement Contractor on the same terms and conditions as this Framework Agreement as a result of corporate restructuring, including takeover, merger, acquisition or insolvency of the Contractor provided that the Replacement Contractor meets the mandatory and discretionary criteria set out in the ITT and the change in Contractor does not result in any other substantial amendments to the Framework Agreement.

#### **Termination by the Council**

- 24.7 The Council shall have the right to terminate this Framework Agreement, or to terminate any part of the Framework Agreement at any time by giving three (3) Months' advance written notice to the Contractor
- 24.7.1 In the event of such notice being given the Council shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as it considers expedient:
- (a) to direct the Contractor, where the Service has not been commenced, to refrain from commencing the Service;
  - (b) to direct the Contractor to complete in accordance with the Framework Agreement all or any part of the Service, which shall be paid for as specified in with the Framework Agreement for Services provided in accordance with the Framework Agreement.
- 24.7.2 Neither Party shall be liable to the other for the consequences of the Council exercising its rights to terminate this Framework Agreement using this **Condition 24.7**.

#### **Termination where the Court Declares this Contract Ineffective**

- 24.8 In the event that this Framework Agreement or any Call-Off Contract is subject to a bona fide and substantive legal challenge of any nature relating to the process by which the Contractor was awarded this Framework Agreement or an Order is accepted by the Contractor (a "Procurement Challenge"), then the Parties shall co-operate in good faith to determine the best way to mitigate the impact of the Procurement Challenge, which may include:

- 24.8.1 varying some or all of the Framework Agreement (and/or any Call-Off Contract); and/or
- 24.8.2 terminating the Framework Agreement (and/or any Call-Off Contract) in whole or in part.
- 24.9 In the event that this Framework Agreement (and/or any Call-Off Contract) is declared ineffective by a court of competent jurisdiction:
  - 24.9.1 this Framework Agreement (and/or any Call-Off Contract) shall be terminated and the provisions of clause 25 shall apply; and
  - 24.9.2 the Council and/or the Participating Bodies shall pay to the Contractor all sums lawfully due to the Contractor in consideration of its proper performance of the Services up until the date and time of the declaration of ineffectiveness. The Council and/or the Participating Bodies shall pay such sums within 30 days of the receipt by it of a correct invoice for the same from the Contractor.
- 24.10 The sums paid to the Contractor by the Council and/or the Participating Bodies under Clause 24.9.2 above shall be in full and final settlement of the Council's and any Participating Body's liability for any loss and/or expense incurred by the Contractor as a result of the Court declaring this Contract ineffective. Neither the Council nor the Participating Body shall have any further liability to the Contractor, including without limitation, in relation to any loss of profit of the Contractor.

## **25. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 25.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Contractor shall continue to fulfil its obligations under the Framework Agreement until the date of termination or expiry of the Framework Agreement or such other date as required under this **Condition 25** unless there has been a Termination Breach.
- 25.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contract entered into prior to the termination of the Framework Agreement to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the terms of the particular Call-Off Contractor there has been a Termination Breach.
- 25.3 Within thirty (30) Working Days of the date of termination or expiry of the Framework Agreement, the Contractor shall return to the Council any data and Confidential Information belonging to the Council in the Contractor's possession, power or control, either in its then current format or in a format nominated by the Council (in which event the Council will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.
- 25.4 The Council shall be entitled to require access to data or information arising from the provision of the Services from the Contractor until the latest of:-
  - 25.4.1 the expiry of a period of twelve (12) Months following termination or expiry of the Framework Agreement; or
  - 25.4.2 the expiry of a period of twelve (12) Months following the date on which the Contractor ceases to provide Services under any Call-Off Contract.
- 25.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of any Party accrued under this Framework Agreement prior to termination or expiry.

- 25.6 The provisions of **Conditions 8 (Warranties and Representations)**, **9 Bribery and Corruption**, **10 (Conflicts of Interest)**, **11 (Safeguard Against Fraud)**, **18 (Records and Audit Access)**, **19 (Confidentiality)**, **20 (Official Secrets Act)**, **21 (Data Protection)**, **26 (Liability)**, **27 (Insurance)**, **31 (Rights of Third Parties)**, **40 (Civil Contingencies Act)** and **41 Transfer of Undertaking (Protection of Employment) Regulations 2006 (as amended)** shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

## PART FIVE: INSURANCE AND LIABILITY

### 26. LIABILITY

- 26.1 Neither of the Parties excludes or limits its own liability for:-
- 26.1.1 death or personal injury caused by its negligence, or that of its own personnel (including its employees, servants, agents, suppliers, volunteers and subcontractors);
  - 26.1.2 fraud or fraudulent misrepresentation by it or its personnel (including its employees, servants, agents, suppliers and subcontractors); or
  - 26.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 26.2 The Contractor shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, their employees and agents, against all liabilities, demands, proceedings, damages, costs, losses, claims, charges and expenses whatsoever in any way arising out of or in connection with:
- 26.2.1 any breach by the Contractor of any of the provisions of the Framework Agreement;
  - 26.2.2 the use or occupation by the Contractor of the Council's premises or of any premises for which the Council has any legal responsibility;
  - 26.2.3 the use by the Contractor of any equipment or asset owned by the Council for which the Council has any legal responsibility;
  - 26.2.4 any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Contractor.
- 26.3 The liability set out in **Condition 26.2** shall, for the avoidance of doubt, include liability for third parties employed in connection with the Services in so far as the management of, or instructions issued to such third parties is the responsibility of the Contractor.

### 27. INSURANCE

- 27.1 Without prejudice to the general indemnity given at **Condition 26**, the Contractor shall take out and maintain the following insurance policies with a reputable insurance company to provide a level of cover sufficient for all risks which may be incurred by the Contractor under this Framework Agreement including death or personal injury, or loss of or damage to property for the duration of the Framework Agreement:-
- 27.1.1 Employer's liability insurance of not less than £10,000,000 (ten million pounds) in respect of any one accident;
  - 27.1.2 Public liability insurance to provide an indemnity of not less than £5,000,000 (five million pounds) in respect of any one claim or series of claims arising out of one incident; and



- 27.1.3 Professional Indemnity Insurance in respect of the Contractor's obligations to provide the Services with reasonable skill care and diligence in an amount of not less than five million pounds (£5,000,000) for any one occurrence or a series of occurrences arising out of any one event for a period of twelve (12) years from the later of the completion date of this Framework Agreement or the completion of all Services under Call-Off Contracts.
- 27.2 The Contractor shall ensure that their Public Liability, Professional Indemnity and Employers Liability insurance contain an "Indemnity to Principals" provision with regard the Council for those risks and losses for which the Contractor is liable under this Framework.
- 27.3 The Contractor shall ensure that no member of its Staff shall commit any act or omission which shall invalidate any insurance policy.
- 27.4 Before the Commencement Date the Contractor shall send free of charge a copy of the insurance policies or other evidence of the insurance policies specified in this **Condition 27** to the Framework Agreement Manager. On each renewal of the insurance during the term the Contractor shall send free of charge a copy of the insurance policies or other evidence of the renewed policies to the Framework Agreement Manager within fourteen (14) days of renewal.
- 27.5 Any excess or deductibles under such insurance (referred to in **Condition 27.1** and **Condition 27.2**) shall be the sole and exclusive responsibility of the Contractor.
- 27.6 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities arising under the Framework Agreement.
- 27.7 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Framework Agreement then the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 27.8 The Contractor shall maintain the insurances referred to in **Condition 27.1** and **Condition 27.2** for a minimum of twelve (12) years following the expiration or earlier termination of the Framework Agreement.

## **28. GUARANTEE**

- 28.1 Before the Commencement Date or prior to the commencement of any extension, if requested to do so by the Council, the Contractor shall procure that the Guarantor shall:
- 28.1.1 execute and deliver to the Council the Guarantee;
- 28.1.2 deliver to the Council a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.
- 28.2 Failure to comply with this **Condition 28** shall entitle the Council to terminate this Framework Agreement (and any Call-Off Contracts) in accordance with **Condition 24** (Termination).

## PART SIX: OTHER PROVISIONS

### 29. TRANSFER AND SUB-CONTRACTING

- 29.1 The Framework Agreement is personal to the Contractor and the Contractor shall not novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Council. The Contractor shall not be entitled to assign or subcontract any of its rights or obligations under this Framework Agreement.
- 29.2 The Council shall be entitled to novate the Framework Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Council provided that such novation shall not increase the burden of the Contractor's obligations under the Framework Agreement.
- 29.3 In the event the Council consents to any novation or other disposal under this **Condition 29**, it shall be entitled to require and the Contractor shall pay the reasonable administrative and legal costs to the Council of formalising this change. For the avoidance of doubt, any such costs may be set-off from sums due to the Contractor.

### 30. VARIATIONS TO THE FRAMEWORK AGREEMENT

- 30.1 Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in **Schedule 3**, provided the variation does not constitute a material change to the Framework Agreement.

### 31. RIGHTS OF THIRD PARTIES

- 31.1 Save as provided in **Conditions 4** and **7** and the rights specified in the Framework Agreement for the benefit of the Council, a person who is not party to this Framework Agreement ("**Third Party**") has no right to enforce any term of this Framework Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this Framework Agreement or vary any of its terms in accordance with the relevant provisions of this Framework Agreement, such rescission or variation will not require the consent of any Third Party.

### 32. SEVERABILITY

- 32.1 If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Framework Agreement had been executed with the invalid provision eliminated.
- 32.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Framework Agreement, each of the Parties shall immediately commence good faith negotiations to remedy such invalidity.

### 33. CUMULATIVE REMEDIES

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

### 34. WAIVER

- 34.1 The failure of any Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of any Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and

shall not cause a diminution of the obligations established by the Framework Agreement.

34.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated by a Party to the other Parties in writing in accordance with **Condition 36**.

34.3 A waiver of any right or remedy arising from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Framework Agreement.

### **35. ENTIRE AGREEMENT**

35.1 This Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

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

35.3 Nothing in this **Condition 35** shall operate to exclude fraud or fraudulent misrepresentation.

### **36. NOTICES**

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

36.2 Any notice or other communication which is to be given by any Party to the other Party shall be given by letter (sent by hand, registered post or by the recorded delivery service). Such letters shall be addressed to the other Parties in the manner referred to in **Condition 36.3**. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted or sooner where the other Party acknowledges receipt of such letter.

36.3 For the purposes of **Condition 36.2**, the address of each Party shall be:

36.3.1 For the Council:  
Framework Agreement Manager – Waste Management Unit  
Hertfordshire County Council  
County Hall  
Hertford  
SG13 8DE

36.3.2 For the Contractor:-

[REDACTED]

Address:

For the attention of: [post title]

36.4 Each of the Parties may change its address for service by serving a notice in accordance with this **Condition 36**.

### **37. COMPLAINTS HANDLING**

- 37.1 The Contractor shall notify the Council of any Complaint made in relation to the provision of the Services within five (5) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Contractor's plans to resolve such Complaint.
- 37.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Contractor to take remedial action under the provisions of the Framework Agreement or a Call-Off Contract, the Contractor shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.
- 37.3 Within two (2) Working Days of a request by the Council, the Contractor shall provide full details of a Complaint to the Council, including details of steps taken to resolve the Complaint.

### **38. DISPUTE RESOLUTION**

- 38.1 The Council and the Contractor shall use reasonable efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Framework Agreement or breach of it.
- 38.2 If any dispute with respect to this Framework Agreement cannot be settled amicably through ordinary negotiations by appropriate representatives of the Council and the Contractor under **Condition 38.1**, the dispute shall be referred to the Framework Agreement Manager and the Contractor's Authorised Representative who shall meet in order to attempt to resolve the dispute. (Where either the Contractor's Authorised Representative or the Framework Agreement Manager has been involved in the negotiations referred to in **Condition 38.1** above, the Contractor's Authorised Representative and the Council's Head of Service or equivalent shall designate a further representative to deal with the dispute).
- 38.3 If any meeting held in accordance with **Condition 38.2** above fails to result in a settlement, the dispute shall be referred by the Parties to mediation or the Centre for Dispute Resolution unless the Council considers that the dispute is not suitable for mediation/Alternative Dispute Resolution ("ADR") proceedings.
- 38.4 In the event of referral of the dispute in accordance with **Condition 38.3**, each of the Parties shall bear its own costs incurred in the mediation / ADR proceedings and one half of the fees and expenses of the mediator / ADR body unless a different agreement is reached as part of any settlement arrived at as a result of the relevant mediation / ADR proceedings.
- 38.5 For the avoidance of doubt the provisions of this **Condition 38** shall not be construed as ousting the jurisdiction of the Court.

### **39. WHISTLEBLOWING**

- 39.1 The Contractor confirms that the Framework Agreement Manager is authorised as a person to whom the Staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 ("**PID Act**") and declares that any of its Staff making a protected disclosure (as defined by PID Act) shall not be subjected to any detriment and the Staff will be made aware of this provision. The Contractor further declares that any provision in any contract purporting to preclude a member of its Staff from making a protected disclosure is void.
- 39.2 The Contractor shall review its Whistleblowing policy and procedure on an annual basis and shall reflect in its own policy the Council's Whistleblowing Procedure and Guidance which can be found in the Council's Doing Business with the Council section at:

**40. CIVIL CONTINGENCIES ACT 2004**

40.1 The Contractor acknowledges and accepts that the Council has obligations under the Civil Contingencies Act 2004 ("CCA") and hereby agrees:

40.1.1 during and after the Framework Period/Term to provide any information, documentation and assistance that the Council may reasonably require to be able to comply with its obligations under section 2 of the CCA;

40.1.2 to put in place such measures as may be reasonably practicable so that as far as reasonably possible it can continue to undertake its obligations under this Framework Agreement in the event of an Emergency (as defined in the CAA) and to notify the Council of such measures;

40.1.3 to obey any instruction of the Council during and in respect of an Emergency, the Council undertakes to remunerate and indemnify the Contractor against any direct claims, costs or losses directly and unavoidably arising from the Contractor's compliance with such instructions.

**41. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006**

41.1 For the purpose of the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) ("the 2006 Regulations"), the Contractor shall, if so requested in writing by the Council at any time during the last twelve (12) months of the Framework Period/Term, immediately provide to the Council the following:

41.1.1 the numbers of staff employed by the Contractor and any sub-contractor;

41.1.2 the terms of employment of those staff; and

41.1.3 any other information relating to the employment of those staff as may be required by the Council for the purposes of the application of the 2006 Regulations.

41.2 The Contractor shall indemnify the Council for all claims, proceedings and costs in respect of all actions brought against that the Council by any of its employees at the end of the Framework Period/Term in the event that the 2006 Regulations do apply at the end of the Framework Period/Term to transfer the employees to any new contractor of the Services.

41.3 Upon providing information under this Condition 41, the Contractor is deemed to give an undertaking that it will not vary any terms and conditions of employment so provided to the Council (including rates of pay) after the date of providing the same without the prior written approval of the Council and shall indemnify the Council in relation to any costs, losses, expenses or other detriment incurred by the Council in consequence of the Contractor having varied such terms and conditions after providing details to the Council.

**42. GENERAL**

42.1 If any provision of this Framework Agreement shall become or shall be declared by any court to be invalid or unenforceable in any way, this shall not affect any other provisions in this Framework Agreement, all of which shall remain in full force and effect.

42.2 This Framework Agreement and/or any non-contractual obligations or matter arising out of or in connection with it, shall be governed by and construed in accordance with the Laws of England and Wales and without prejudice to the dispute resolution

procedure set out in **Condition 38 (Dispute Resolution)** each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

42.3 This Framework Agreement (together with any documents referred to herein and any additional documents issued by the Council to the Contractor in relation to the Framework Agreement) constitutes the whole agreement between the Parties in respect of all matters dealt with within the Framework Agreement and supersedes all documents and negotiations (whether written or oral). No Party has relied upon any representation whether oral or written except as expressly set out in this Framework Agreement or document referred to herein.

42.4 For the avoidance of doubt nothing in this Framework Agreement shall be construed as a legal partnership within the meaning of the Partnership Act 1890 or as a contract of employment. Save as expressly stated in this Framework Agreement no Party shall:

42.4.1 act or hold itself out as an agent of another Party; nor

42.4.2 make any representations or give any warranties to third parties on behalf of or in respect of another Party;

42.4.3 bind or hold itself out as having power to bind another Party.

## **APPENDIX 1 - AWARD CRITERIA**

### **1. INTRODUCTION**

- 1.1 This **Appendix 1** specifies the procedures that the Council and any Participating Body must follow to place an Order.
- 1.2 The Council or any Participating Body is entitled at any time during the Framework Period/Term to order Services. Such Services shall be provided by the Contractor as Ordered Services in accordance with the provisions of a Call-Off Contract (**Schedule 10**).
- 1.3 In the event that the Contractor so decides, a Call-Off Contract shall be entered into by the Contractor accepting an Order served by the Council or a Participating Body in accordance with these Ordering Procedures and **Clause 7** of the Framework Agreement.

### **2. AWARD PROCEDURES**

#### **2.1 Direct Award Cascade**

- 2.1.1 This method can be used by the Council if:
  - (a) the required service requirements can be met by the Specification contained in Schedule 1;
  - (b) the Council can demonstrate that the selected Contractor demonstrates best value for money; and
  - (c) all of the terms of the proposed Call-Off Contract are laid down in this Framework Agreement and the Call-Off Contract terms do not require amendment or any supplementary terms and conditions.
- 2.1.2 The Council will order Services from the highest scoring/ranked tenderer awarded to the Framework Agreement (during the tender stage) in the first instance, If that Contractor is unable to fulfil the Order then the Council reserves the right to go to the second highest scoring/ranked tenderer awarded the Lot and so on until the Order can be fulfilled.

#### **2.2 Competed Services**

- 2.2.1 A mini-competition between all contractors appointed to the Framework Agreement shall be carried out in the following circumstances:
  - (a) where the conditions of paragraph 2.1 above are not met;
  - (b) where the Council so elects, or
  - (c) on all occasions (if any) which Participating Bodies seek to call-off Services under this Framework Agreement.
- 2.2.2 The Council's Framework Agreement Manager or their delegated representative will contact all appropriate Contractors to obtain best current prices. Mini tenders will be evaluated using the following criteria:

<b>Price</b>	<b>range from 60% - 100%</b>
<b>Quality</b>	<b>range from 0% - 40%</b>
- 2.2.3 Weightings and sub-criteria will be identified at the mini tender stage.
- 2.2.4 In any event the Council accepts no responsibility for the chosen contracting method of any of the Participating Bodies who utilise the Framework Agreement.

### **3. SPECIAL TERMS**

- 3.1 Special Terms may be proposed only by the Council or a Participating Body as the case may be.
- 3.2 Special Terms must not be used to substantially alter the model Call-Off Contract terms and conditions in **Schedule 10** of this Framework Agreement.

### **4. ORDERS**

- 4.1 An Order shall be based on the pro forma set out in Schedule 9.

### **5. ACKNOWLEDGMENT OF AN ORDER**

- 5.1 The Contractor shall, on receipt of an Order; either
  - 5.1.1. acknowledge in writing (which shall include email) receipt of that Order to the Council (or Participating Body as the case may be) and state that it is unable or unwilling to fulfil the Order; or
  - 5.1.2 acknowledge in writing (which shall include email) receipt of that Order to the Council (or the Participating Body as the case may be )and state its acceptance of that Order.

### **6. ACCEPTANCE OF AN ORDER**

- 6.1 In the event that the Contractor accepts the Order in accordance with the provisions of paragraph 5.1.2 above, the Contractor shall, simultaneously with that acceptance:
  - 6.1.1 confirm its agreement to the terms of the Order, including any proposed Special Terms, alternative clauses and additional clauses; and
  - 6.1.2 in accordance with the option stated the Order (in accordance with paragraph 5.1.9 above), comply with the Council's or Participating Body's chosen method of execution of the Call-Off Contract.

### **7. ORDER QUERIES**

- 7.1 If the Contractor wishes to query any matter in relation to an Order served on it by the Council or Participating Body, the Contractor shall raise the matter with the Council or Participating Body as the case may be as soon as practicable. The Contractor shall agree the Order with the Council or Participating Body as soon as practicable thereafter.

### **8. BINDING CONTRACT**

- 8.1 A binding agreement for the provision of the Ordered Services shall be formed on the Council's or Participating Body's receipt of a copy of the Call-Off Contract duly signed by both the Contractor and the Council or Participating Body, as the case may be.



## SCHEDULE 1 - SPECIFICATION

### A. Overview of Services Required

Waste Disposal Authorities (WDAs) are responsible for arranging for the disposal of all waste collected by Waste Collection Authorities (WCAs) under their duties and powers defined in the Environment Protection Act 1990 together with waste collected at Household Waste Recycling Centres (HWRCs). This waste is known as Local Authority Collected Waste (LACW) and includes Clinical Waste and Offensive Waste as defined by the Controlled Waste Regulations 2012.

The Framework Agreement requires the provision of the Collection, Transport and Disposal/Treatment of Clinical Waste, Offensive Waste and Small Animal Remains waste, collectively referred to in the Specification (this Schedule 1) as Waste. See Appendix 1 for the European Waste Catalogue (EWC) codes for these wastes. The Council owns 100 x 770 litre yellow wheeled Clinical Waste Containers for use within this Framework.

Tenders are invited for the provision of the Collection and Transport of Approved Waste at Transfer Stations and/or Depots, including, Cytotoxic and Cytostatic Medicines, Medicinal Waste and Amalgam Waste, to a licensed Treatment/Disposal Facility and its Treatment or Disposal there by approved methods. Clinical Waste and Offensive Waste is collected from domestic and commercial premises by the WCAs or their contractors and delivered to the Transfer Stations and/or Depots in Approved Vehicles from which it is offloaded into the Containers provided.

The purpose of the Service is to provide reliable, effective and satisfactory Collection, Transport and Disposal of WCA collected Waste in such a way as to protect the environment and meet all statutory obligations of both the WDA and the WCAs. The Contractor shall be expected to comply fully with any changes in Law pertaining to the Transport and Disposal of Waste.

The Framework Agreement will comprise of an agreement with Hertfordshire County Council as the underpinning authority with other named Participating Bodies able to join the Framework Agreement by way of an Access Agreement. The Hertfordshire County Council service value across the duration of the framework is estimated at approximately £400,000. The Participating Bodies for this Framework are; Bedford Borough Council, Buckinghamshire County Council and Oxfordshire County Council.

Council	Infectious	Offensive	Sharps	Estimated Tonnage/Annum
Hertfordshire County Council	150 tonnes	50 tonnes	28 tonnes	228 tonnes
Bedford Borough Council	114 tonnes	67 tonnes	9 tonnes	190 tonnes
Buckinghamshire County Council	140 tonnes	5 tonnes	5 tonnes	150 tonnes
Oxfordshire County Council	16 tonnes	36 tonnes	1 tonne	53 tonnes

The Waterdale Transfer Station currently receives Waste from all ten WCAs in Hertfordshire. Not all WCAs collect commercial Clinical Waste and Offensive Waste. Other Participating Bodies may have alternative arrangements in place and these will be specific to each Call Off Contract.

Current requirements are for Waste Collection from Waterdale Transfer Station, Watford however the Council is currently assessing the need for additional Transfer Stations strategically located within the county and the potential for WCA owned Depots to act as bulking points for Approved Waste where suitable Environmental Permits allow. Therefore, it should be noted that the collection point for Approved Waste may change or multiple collection points may be used; a list of Transfer Stations and Depots are provided in Table 1. In the event that collection costs increase or decrease as a result of any of these locations being used, the Council will discuss the costings with the Contractor and agree revised costs via a Contract variation.

As waste arisings vary for reasons beyond the control of the Council, no guarantee can be given that they will continue, meet or exceed the levels detailed in Table 2. It should be noted that work is being undertaken by the WCAs and WDA in Hertfordshire to redirect as much domestic Offensive Waste as possible into the residual waste stream. The total waste arisings for this Framework Agreement will be dependent on Participating Bodies take up.

The Contractor shall also be responsible for nominating a Disposal Facility that WCAs can Directly Deliver Waste to, which shall include, but not be limited to Large Animal Carcasses that may be unsuitable for delivery to the Transfer Stations and/or Depots.

To assist the WCAs and WDA in managing the collection of Clinical Waste and Offensive Waste the Contractor is required to provide advice and information.

The Contractor is also required to provide regular information regarding the movement and final end destination of all waste Disposed Of/Treated.

Other Participating Bodies' Clinical Waste and Offensive Waste arisings are likely to vary and will be specific to each Call Off Contract.

Table 1: Transfer Stations and Depots from which the collection of Approved Waste may be required

Transfer Station / Depot	Location	Opening Times
Waterdale Transfer Station, Hertfordshire County Council	St Albans Road Hertfordshire WD25 0PR	Monday to Friday 07:00 – 16:30  Saturday 07:00 – 12:30
Northern Transfer Station, Hertfordshire County Council	Potential Development of a Transfer Station near Baldock.	
Cavendish Road Depot, Stevenage Borough Council	Cavendish Road Stevenage Herts SG12ET	Monday to Thursday 08:00 – 16:00  Friday 08:00 – 15:00
Cupid Green Depot, Dacorum Borough Council	Redbourn Road Hemel Hempstead Hertfordshire HP2 7BA	Monday to Thursday 07:30 – 17:00  Friday 07:30-16:30
Sandridge Road Depot, St Albans Borough Council	Sandridge Gate Business Centre Ronsons Way St Albans Road Sandridge Hertfordshire AL4 9XR	Monday to Friday 07:00 – 17:00
Broxbourne Borough Council Depot	Broxbourne Business Centre New River Trading Estate Fairways Cheshunt EN8 0NP	Monday to Friday 08:00 – 16:00
Burymead Road, North Hertfordshire	Burymead Road Waste Transfer Station 46 Bury Mead Road Hitchin SG5 1RT	Monday to Friday 07:00 – 16:30
Tewin Road, Welwyn Hatfield	Tewin Road Welwyn Garden City AL7 1BD	Monday to Friday 06:00 – 11:00

Watford Borough Council	Watford Borough Council, Wiggenhall Road, Watford, WD18 0FB	Monday to Friday 07:00 – 17:00
East Hertfordshire Council Depot	East Herts Council Depot, Baldock Road, Buntingford, SG9 9ER	Monday to Friday 07:00 – 16:00
Hertsmere Borough Council	Cranbourne Industrial Estate, Cranbourne Road, Potters Bar, Herts, EN6 3JE	Monday to Friday 05:30 – 07:30
Three Rivers District Council	Kings Langley Depot, Railway Terrace, Kings Langley, WD4 8JE	Monday to Friday 06:00 – 17:00

Table 2: Approximate Clinical Waste and Offensive Waste Tonnages 2018/19 for Hertfordshire County Council

Waste Type	Total Annual Tonnage
Sharps Waste	28 tonnes
Infectious Waste	150 tonnes
Offensive Waste	50 tonnes
<b>Total</b>	<b>228 tonnes</b>

Current Collection arrangements for the tonnages indicated in Table 2 of Schedule 1 (Specification) are that on average, a total of 46 (770 litre) bins are Collected over the course of each Tuesday and Friday. Whilst these numbers are indicative of existing arrangement, the Council expects Bidders to submit a solution based on capacities with reference to their own vehicles.

Using the projected tonnages indicated in Table 2 of Schedule 1 (Specification), an estimate for the number of Collections required is below:

Approximate Current Total Tonnage: 228 tonnes

Estimated Weekly Tonnage: 4.38 tonnes

Current Collection Days: Tuesday afternoon and Friday morning

Frequency: Every 2-3 days

Please note that this calculation is an estimate only and will be dependent on the vehicle used. Therefore, the Council does not guarantee a collection will be required every 2 to 3 days.

In any case, full Containers must be Collected and Transported from the Transfer Station within 24 hours of a request from the Transfer Station Operator, as per paragraphs 6.4 and 7.1 of Schedule 1 (Specification).

## **B. Specification**

### **1. The Service**

For the duration of the Operational Period the Contractor shall arrange for the Collection of Containers and their Transport to suitably licensed Disposal/Treatment Facilities provided by the Contractor. Approved Waste Transported in accordance with this Framework Agreement shall be Treated/Disposed Of in accordance with all relevant legislation and regulations governing such Disposal.

## **2. Standard of Service**

The Services provided by the Contractor shall be effective and efficient and of the quality and standard specified in the Framework Agreement Specification (Schedule 1) and the Department of Health – Health Technical Memorandum 07-01: Safe management of healthcare waste [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/167976/HTM\\_07-01\\_Final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/167976/HTM_07-01_Final.pdf) or equivalent at the Commencement Date and is appropriate thereto be at least in accordance with that standard of code of practice and/or all workmanship in connection with the provision of Services.

## **3. Hours of Waterdale Waste Transfer Station Opening**

During the normal working week the Transfer Station Operator provides the Waterdale Waste Transfer Station to receive Clinical Waste Monday to Friday between the hours of 07.00 and 16.30. All Waste properly received will be deposited in the Containers provided by the Council. The Contractor shall note that any collection vehicles must arrive one (1) hour before closing time.

## **4. Recording of Waste at the Waterdale Waste Transfer Station**

4.1 The Transfer Station Operator shall keep records of and shall supply the Council's Framework Agreement Manager with such information relating to Weights of loads, vehicles and persons collecting Waste at the Site and other related matters as they may require and in such form as they may reasonably require for waste leaving the Transfer Station. The form of such records shall facilitate checking and further use by the Council's Framework Agreement Manager for accounting, administrative or any other internal purposes. All information relating to each visit of a Contractor's Vehicle to the Transfer Station shall be recorded on a weighbridge ticket. The recording onto the ticket of the time and Weight of each vehicle on the weighbridge shall occur automatically when the ticket printing device is activated.

4.2 On arrival at the Disposal Facility the following details shall be electronically recorded for each vehicle:-

- 4.2.1 Ticket Number
- 4.2.2 Date and Time of arrival
- 4.2.3 Registration Number of the Vehicle
- 4.2.4 Time of departure
- 4.2.5 Weight gross and tare for each material
- 4.2.6 Net Weight for each material

and any such related information as the Council's Framework Agreement Manager may reasonably require.

4.3 The Transfer Station Operator shall, at all times, maintain at the weighbridge facility a diary in which any errors or discrepancies which have occurred, in respect of Waste delivered to or removed from the Transfer Station or in computer entries that have been made, shall be recorded.

4.4 Electronically recorded data including Weights, dates, delivery times and those errors or discrepancies referred to in paragraph 4.3 above are conveyed weekly, normally on Mondays via e-mail to the Council's Framework Agreement Manager by the Contractor

4.5 In the event that the Disposal Facility weighbridge is not functioning, the Contractor shall apply an average Weight for each stream of waste that is typical for that particular Contractor's Vehicle and that has been Approved by the Council's Framework Agreement Manager.

4.6 For the avoidance of doubt, the Council shall require a breakdown of the material delivered from each load, as specified above and the overall net weight of all waste streams will be compared to the records of the Transfer Station Operator.

- 4.7 The process of recording waste, as per Section 4 of the Specification, will be used at all of the Council's Transfer Stations and the Disposal Facility. An alternative method may be used to record waste collected at WCA Depots.
- 4.8 Other Partner Authorities may have alternative recording requirements and these need to be specified in each Call Off Contract.

## **5. Use of the Waterdale Waste Transfer Station**

- 5.1 All surfaces used by Contractor's Vehicles Collecting and Transporting Waste at the Transfer Station are of concrete or other hard material and are graded to falls to prevent water from forming ponds thus avoiding damage to both delivery and collection vehicles. Containers containing Waste are stored in a designated Clinical Waste Compound at the Transfer Station; this is housed in a partially enclosed structure compliant and in accordance with Environment Agency standards. A separate storage area close to the Clinical Waste Compound is used to store empty Containers. The locations of these storage areas are shown in Part D of Schedule 1 (Specification).
- 5.2 The Contractor must liaise with the Transfer Station Operator and must execute all operations necessary for the Collection and Transport of Approved Waste with the maximum reasonable speed and efficiency, so as to minimise any inconvenience and/or delays to the Council and its employees, to the Transfer Station Operator and its employees and to any other firm or person entitled to use or enter the Transfer Station in accordance with the Services.
- 5.3 Contractor's Vehicles and persons within the Transfer Station for the purposes of the Services will, for operational purposes, be subject to the directions of the Transfer Station Operator who shall ensure that such Contractor's Vehicles and persons comply with the requirements of the Services.
- 5.4 All Contractor's Vehicles Collecting and Transporting Containers of Approved Waste will only be admitted to the Transfer Station during the Normal Opening Hours or such additional opening hours as may be arranged to cover Bank Holidays or emergency closures. The Contractor shall arrive to site at least one (1) hour before the Transfer Station/Depot closure time.
- 5.5 If for any reason the Transfer Station is forced to close, the Transfer Station Operator will make every effort to contact the Contractor and inform them of the closure, the reason for the closure, the steps being taken to make the Transfer Station available again and the date and time when it is expected to be available for the Collection and Transport of Waste.
- 5.6 The process for using the Waterdale Transfer Station as per Section 5 of Schedule 1 (Specification) will be used at all of the Council's Transfer Stations.
- 5.7 Other Partner Authorities may have alternative use of Transfer Station requirements and these will be specified in each Call Off Contract.

## **6. Treatment and Disposal**

- 6.1 The Approved Waste Collected and Transported by the Contractor shall be Treated/Disposed Of by an approved method using a Disposal/Treatment Facility(ies) legally authorised for the Disposal/Treatment of such Waste.
- 6.2 The Disposal Facility shall be capable of Treating or Disposing Of all types of Waste which are likely to be collected by the WCAs, in a safe and appropriate manner.

- 6.3 The Contractor shall also be responsible for nominating a Disposal Facility, which may or may not be the same Disposal/Treatment Facility used to provide Services to the Council, which the WCAs can Directly Deliver Waste to for the purposes of their independent disposal needs and which may include, but not be limited to, Small and Large Animal Carcasses.
- 6.4 All Approved Waste shall be collected by the Contractor within 24 hours of notification, including Small Animal Carcasses. The payment for services under paragraph 6.3 and 6.4 shall be charged directly to the WCA concerned by the Contractor.
- 6.5 The Council aims to manage Clinical Waste in line with the waste hierarchy, any bids incorporating recycling/recovery/new initiatives may score more highly in the quality evaluation (Bid Form 16).

## **7. Removal of Approved Waste**

- 7.1 Containers of Approved Waste must be Collected and Transported from the Transfer Stations and/or Depots within twenty four (24) hours of a request for collection from the Transfer Station Operator within the opening hours of the Transfer Station and/or Depots and no later than one (1) hour before Transfer Station/Depot closure times due to the time it takes to weigh in, load and weigh out of site. Other Participating Bodies may have alternative collection requirements and these will need to be specified in each Call Off Contract.
- 7.2 All Containers must be individually checked prior to removal from the Transfer Stations and/or Depots to ensure the waste type within the Container is accurately Disposed of or Treated by an approved method using a Disposal/Treatment Facility legally authorised for the Treatment or Disposal Of such Waste.
- 7.3 The Contractor shall implement a methodology for labelling each Container to clarify Waste type to ensure segregation of Waste and appropriate treatment.
- 7.4 The Contractor shall either replenish the Council's Container stock by returning the Council's Containers or replenish the Council's stock with like for like (eg. quantity, quality and colour) Containers. For the avoidance of doubt, if the Contractor replenishes the Council's Container stock with like for like Containers then the Contractor shall replace all missing Council branded Containers at the end of the Contract with new Containers of the same specification.
- 7.5 All Containers Collected which are Transported from the Transfer Stations and/or Depots shall be replaced at the time of collection with an adequate number of the Council's branded clean and empty Containers (or similar as in Paragraph 7.4) so that there is sufficient capacity to securely contain the quantity of Approved Waste delivered. For the avoidance of doubt, the Containers shall be cleaned at the Contractor's Facility prior to return.
- 7.6 The Contractor shall be responsible for identifying tonnage trends to ensure that adequate resources are provided to contain the Approved Waste in accordance with each Transfer Station's and/or Depot's Environmental Permit and Transport the Approved Waste to prevent excessive build-up of Approved Waste and odour production.
- 7.7 The Contractor shall ensure that the Council's branded Containers are kept separately from existing container stock to prevent loss of containers or with prior agreement, the Contractor shall integrate the Council's branded Containers into their existing stock and replace all missing Council branded Container at the end of the Contract as per Paragraphs 7.4 and 7.5.
- 7.8 The Contractor is responsible for ensuring all collection vehicles are compliant with all relevant legislation, including but not limited to Operator Licence conditions and ADR requirements, as per sections 10 and 13.

- 7.9 The Contractor shall ensure that if required, the Transfer Stations and/or Depots are cleared of all Approved Waste at the end of each Accounting Period, as detailed in Appendix 2 of this Specification in order to ensure that accurate data returns are made by the Council to the WasteDataFlow system and in any case by 31 March each year.
- 7.10 Small Animal Carcasses shall be stored on site within a sealed bag inside an individual container. The Contractor shall be notified as soon as possible of a required collection and the Transfer Station Operator shall endeavour to align this collection with the regular scheduled collection times where possible. However, if not practicable, the Contractor shall collect within 24 hours.

## **8. Quantities of Waste**

- 8.1 The minimum and/or maximum quantity of Waste to be Collected and Transported and Disposed Of under the Framework Agreement or any subsequent Call Off Contract cannot be guaranteed. Allowances must be made for Waste reduction and/or growth in the quantities delivered to the Transfer Stations and/or Depots by the WCAs. It should be noted that work is being undertaken by the WCAs and WDA to redirect the majority or as much as possible domestic Offensive Waste into the residual waste stream.
- 8.2 Other Participating Bodies' Clinical Waste and Offensive Waste arisings are likely to vary and will be specific to each Call Off Contract.

## **9. Operational Requirements**

- 9.1 The Transfer Station Operator will ensure that vehicle drivers accessing the Transfer Stations receive, at the appropriate point or points, all necessary instructions to ensure that they observe the requirements necessary for the safe and proper use of the Transfer Station/Depots in the prescribed manner. This may necessitate instructions being given at the weighbridge and/or the Clinical Waste Compound. Within the Transfer Stations/Depots vehicle speed restrictions as prescribed by the Site rules and the provisions of the Highway Code must be observed.
- 9.2 The Contractor shall Transfer to the Contractor's Vehicles all Approved Waste deposited at the Transfer Stations/Depots' Clinical Waste Compound using fit for purpose and appropriately maintained equipment, such that the Contractor's methods shall provide for a clean, tidy and efficient operation. Each Contractor's Vehicle shall be loaded such that every effort is made to achieve the maximum vehicle design payload.
- 9.3 At the Transfer Stations/Depots the Contractor must comply with the proper directions and requirements of the nominated Transfer Station Operator.
- 9.4 It is the Contractor's responsibility to report any damage to Vehicles which occurs whilst on Site at the Transfer Station/Depot and prove the damage occurred at the Transfer Station/Depot. For the avoidance of doubt, any damage not reported to the operator of the Transfer Station/Depot will be the responsibility of the Contractor to repair and bear any associated repair costs.
- 9.5 The Contractor shall observe and ensure the avoidance of damage to and (save for fair wear and tear) deterioration of weighbridges, roads, kerbing, vehicle access routes, footways and structures at the Transfer Station/Depot.
- 9.6 All Contractors' Vehicles must be weighed for recording purposes at the nominated Disposal/Treatment Facility. Contractor's Vehicles shall be weighed gross and tare on each visit.
- 9.7 No sorting or totting of Approved Waste by the Contractor or its employees shall be permitted.

## **10. Treatment/Disposal Facility Requirements**

- 10.1 The Contractor shall regulate using electronic equipment the arrival and departure of all vehicles and persons depositing Approved Waste at the Disposal/Treatment Facility, by means of a weighbridge and ancillary equipment. All Contractor's Vehicles delivering Approved Waste shall be weighed both gross and tare with the same personnel on board using weighbridges and ancillary equipment provided by the Contractor which has been checked and approved as accurate by Trading Standards Officers.
- 10.2 The Contractor shall keep records of and shall supply the Council's Framework Agreement Manager with such information relating to weights of loads, vehicles and persons depositing waste at the Site and other related matters as they may require and in such form as they may reasonably require. The form of such records shall facilitate checking and further use by the Council's Framework Agreement Manager for accounting, administrative or any other internal purposes.
- 10.3 The gross and tare weights of each Contractor's Vehicle delivering Approved Waste to a Disposal/Treatment Facility shall be electronically recorded at each Disposal/Treatment Facility. The details provided will be in accordance with the WAMS system specification data file format as detailed in Appendix 3 of Schedule 1 (Specification), together with any such related information as the Council's Framework Agreement Manager may reasonably require. A six digit ticket number will be provided to each Contractor's Vehicle leaving the Transfer Station this number must be referenced on any paperwork/tickets specific to each Treatment/Disposal Facility where Approved Waste is deposited. Electronically recorded data of each Contractor's Vehicle delivering Approved Waste to a Disposal/Treatment Facility is to be conveyed weekly, normally on Mondays via email, as identified in Appendix 2 of this Specification to the Council's Framework Agreement Manager.
- 10.4 The Council's Framework Agreement Manager may request copies of the paperwork/tickets to be provided, in addition to the electronically recorded data, copies should be provided within 3 working days of such a request."
- 10.5 Calculations shall be made to determine the load Weight of each waste type and daily, weekly, monthly and annual totals of Weights and types of Approved Waste shall be supplied in a manner to be approved by the Council.
- 10.6 Electronically recorded data of each waste type, including Weights, date and time of delivery are to be conveyed weekly, normally on Mondays via e-mail and at the end of each Accounting Period as identified in Appendix 2 of this Specification, to the Council's Framework Agreement Manager, in the form of an agreed method.
- 10.7 In the event that the Treatment/Disposal Facility weighbridge is not functioning, the Treatment/Disposal Facility shall continue to accept Waste from the Contractor's Vehicles and shall apply an average Weight for each stream of waste that is typical for that particular Contractor's Vehicle and that has been Approved by the Council's Framework Agreement Manager.
- 10.8 The Contractor shall at all times maintain at the weighbridge facility a diary in which any errors or discrepancies which have occurred in respect of Approved Waste delivered to or removed from the Disposal/Treatment Facility or in computer entries that have been made shall be recorded. Any errors or discrepancies shall be conveyed weekly to the Council's Framework Agreement Manager by the Contractor, in the form of an agreed method.
- 10.9 The Contractor shall be responsible for liaising with Disposal/Treatment Facilities such that Approved Waste is Treated/Disposed Of so as not to cause any delay in collection of the Approved Wastes from the Transfer Stations and/or Depots or any cause for complaint due to an excessive build-up of Approved Waste at the Transfer Stations and/or Depots.



- 10.10 Other Participating Bodies may have alternative recording requirements and these need to be specified in each Call Off Contract.
- 10.11 The Contractor shall comply with all Acts of Parliament, Regulations and Orders affecting the Disposal/Treatment Facility and its operation at its own expense, comply with all the requirements of the Environmental Permit and furnish the Council with copies of all certificates or notices which may be received by the Contractor under any such Acts of Parliament, Regulation, Order or Licence and keep the Council fully indemnified against any breach or non-observance of any such Acts of Parliament, Regulation, Order or Licence.
- 10.12 The Contractor shall appoint a dedicated Technically Competent Manager to manage the Disposal Facility or oversee any element of the Contract that is sub-contracted in accordance with the Environmental Permitting (England and Wales) Regulations 2010 and shall, whenever so required, allow the Council to inspect any documentation relating to such competence. The Technically Competent Manager will oversee all arrangements and be a single point of contact.
- 10.13 The Contractor shall hold a Goods Vehicle Operators' Licence under the Goods Vehicle (Licensing of Operators) Act 1995 which licence covers the Transport operation and shall, whenever so required, allow the Council to inspect any documentation relating to such licence. In addition, the Contractor shall hold a Certificate of Professional Competence under the Goods Vehicle Operators (Qualifications) Regulations 1999 or any subsequent re-enactment of the same.

## **11. Use of the Treatment/Disposal Facility**

- 11.1 If for any reason the Treatment/Disposal Facility becomes or is likely to become unavailable for Treatment/Disposal Of Approved Waste, the Contractor shall immediately inform the Council's Framework Agreement Manager.
- 11.2 The Contractor shall also immediately inform the Council's Framework Agreement Manager of the reason for the unavailability of the Treatment/Disposal Facility, the steps being taken to make it available again and the date and time when it is expected to be available to receive Approved Waste.
- 11.3 In the event of a dispute between the Contractor and the Council, the Contractor and the Transfer Station Operator or persons delivering Waste in Approved Vehicles or persons Collecting Approved Waste in a Contractor's Vehicle, the Contractor shall maintain the operation of the Services, as efficiently as possible and to that end, shall comply with the requirements of the Council's Framework Agreement Manager to minimise interruption of the operation pending the resolution of any outstanding differences. The Council's Framework Agreement Manager's decision on such matters shall be final subject to Dispute Resolution as detailed in Clause 38 of the Conditions of Framework Agreement.
- 11.4 Other Participating Bodies may have alternative dispute resolution processes which, if the Participating Body chooses to rely on, shall be specified or referenced in each Call Off Contract; however, in the absence of which, the parties shall rely upon provisions equivalent Clause 38 of the Conditions of Framework Agreement.

## **12. Operational Equipment**

- 12.1 The Contractor shall provide non-fixed Operational Equipment including plant, equipment (including computer equipment), vehicles, tools and all other items whatsoever necessary to comply with all requirements of the Conditions of the Framework Agreement and this Specification. This equipment shall be installed, maintained and replaced as necessary for the effective and efficient operation of the Framework Agreement.

- 12.2 The Contractor shall provide fit for purpose Operational Equipment and replace it at his own expense as and when necessary to ensure compliance with all requirements of the Conditions of the Framework Agreement and this Specification. The cost of adapting the Disposal/Treatment Facility to accommodate any replacement fixed Operational Equipment shall be borne by the Contractor.

### **13. Legislative Requirements**

- 13.1 Responsibility of Approved Waste will pass to the Contractor as the Waste Carrier at such a point as when the Approved Waste is bulked and leaves the Transfer Station. The Contractor shall assume responsibility for the onward Transportation of the Approved Waste to the final destination(s).
- 13.2 An auditable record shall be provided by the Contractor evidencing the tonnage received by the Disposal/Treatment Facility on a weekly basis and at the end of each period, as identified in Appendix 2. Evidence should be suitable to demonstrate adherence to the 'Duty of Care' legislation on the part of all parties.
- 13.3 The Contractor shall be responsible for generating and dealing completely with Transfer and consignment notes in accordance with relevant legislation. For the avoidance of doubt, the price contained in Bid Form 15 shall be inclusive of any consignment note costs, legislation charges or changes in legislation.
- 13.4 The Contractor and/or their Sub-Contractor shall hold a Goods Vehicles Operators' Licence under the Goods Vehicle (Licensing of Operators) Act 1995 which covers the transport operation and shall, whenever so required, allow the Council to inspect any documentation relating to such licence. In addition the Contractor shall hold a Waste Carrier's Licence and a Certificate of Professional Competence under the Goods Vehicles Operators (Qualifications) Regulations 1999 or any subsequent re-enactment of the same.
- 13.5 The Contractor shall be responsible for ensuring any Treatment/Disposal Facility Approved Waste throughout the duration of the Contract has the correct Environmental Permit or exemption.
- 13.6 The Contractor shall move and store Approved Waste in accordance with any guidance (statutory or otherwise) issued by the Environment Agency, Health and Safety Executive, or other relevant body.
- 13.7 The Contractor shall be responsible for complying with all current and future relevant legislation and guidance affecting the Collection, Transportation, Treatment/Disposal Of Approved Waste, currently and throughout the duration of the Framework Agreement, with a full audit trail of Waste from Collection through to final Disposal. This includes but may not be limited to Environmental Protection Act 1990 (including Duty of Care/Waste Transfer), Control of Pollution Act 1974, The Hazardous Waste Regulations 2005, The List of Waste Regulations (England) 2005, The Waste Incineration (England and Wales) Regulations 2002, The Waste Incineration Directive (2000/76/EC), The Controlled Waste Regulations 1992/2012, the Carriage of Dangerous Goods Regulations 1996, HSE Guidelines and the Department of Health's - Health Technical Memorandum 07-01: Safe management of healthcare waste or equivalent at the Commencement Date or any updated version.
- 13.8 The Contractor shall comply with all Health and Safety legislation including but not limited to the Health and Safety at Work Act 1974, The Control of Substances Hazardous to Health Regulations (COSHH) 2002.
- 13.9 The Contractor shall operate to comply with all relevant legislation and Site permits/licences and permissions and avoid pollution, detriment to local amenity, or danger to health.
- 13.10 The Contractor shall ensure that all bi-products/residues waste from any treatment processes are Disposed Of at a licensed/permitted facility and will provide Duty of Care evidence to verify that fact.

- 13.11 The Contractor shall allow the Council to visit unannounced and inspect the facilities upon request.
- 13.12 The Contractor will issue weighbridge tickets for each delivery/movement to validate Weights.
- 13.13 All vehicles/drivers used by the Contractor to collect Approved Waste from the Transfer Stations and/or Depots will be ADR compliant or if ADR exempt, the vehicles will fulfil certain specifications ensuring all movement of Waste will comply with clinical and hazardous waste regulations and Carriage of Dangerous Goods Regulations 1996.
- 13.14 The Contractor shall inform the Council's Framework Agreement Manager of any conviction under any legislation affecting the provision of the Services.

#### **14. WasteDataFlow**

- 14.1 The movement and end destination of all Waste Treated/Disposed Of must be known including all outputs from any processes, for example Incinerator Bottom Ash (IBA). The Contractor shall provide the Council's Framework Agreement Manager with a quarterly report, as identified in Appendix 2 of this Specification, in a format to be agreed at the start-up meeting.

#### **15. Tonnage Figures to be used when Invoicing**

- 15.1 Tonnage figures for each waste type will be provided by the Contractor at the end of each period, as identified in Appendix 2 of Schedule 1 (Specification).
- 15.2 Tonnage figures will be provided to the Council's Framework Agreement Manager within one (1) week of the end of each period, as identified in Appendix 2 of Schedule 1 (Specification).
- 15.3 Once tonnage figures have been verified for Approved Waste collected from Transfer Stations and/or Depots by the Council's Framework Agreement Manager, an invoice for the Charging Period, as identified in Appendix 2 of Schedule 1 (Specification), should be sent to the Council's Framework Agreement Manager.
- 15.4 Other Participating Bodies' Invoicing processes are likely to vary and will be specific to each Call Off Contract.

#### **16. Provision of Clinical Waste and Offensive Waste Advice and Information**

- 16.1 The Contractor shall provide advice and information to assist the WCAs in managing the collection of Clinical Waste and Offensive Waste (see Bid Form 19) including but not limited to:
- 16.1.1 Health and Safety information relating to Clinical Waste and Offensive Waste collections and handling.
  - 16.1.2 Pre-acceptance audit requirements to comply with the Department of Health – Health Technical Memorandum 07-01: Safe management of healthcare waste and the Hazardous Waste Regulations 2005 or their equivalents at the Commencement Date.
  - 16.1.3 Leaflets for the WCAs to make available to their customers regarding pre-acceptance audits and the correct segregation of Clinical Waste.
  - 16.1.4 Updates to the Council on changes in legislation or industry best practice.

## **17. Health and Safety**

The Contractor shall:-

- 17.1 operate at the Transfer Stations and/or Depots in accordance with its health and safety policy.
- 17.2 report any accident that occurs at the Transfer Stations and/or Depots immediately to the Transfer Station Operator and complete an accident report form.
- 17.3 provide and position suitable numbers of hazard warning notices, signs, cones, barriers and footways as necessary for the proper protection of its employees, contractors or sub-contractors, the Council's employees, customers and users of Sites during the performance of the Framework Agreement.
- 17.4 be available to attend, as a minimum, once in every Financial Quarter, meetings with the Council's health and safety representative to discuss all aspects of Site operation. The date of each of these meetings shall be agreed between both parties.
- 17.5 hold relevant health and safety documents which must include as a minimum:-
  - 17.5.1 health and safety policy
  - 17.5.2 up to date risk assessments and method statements
  - 17.5.3 safe working practises and emergency procedures
  - 17.5.4 Staff induction records
  - 17.5.5 records of tool box talks
  - 17.5.6 Personal Protective Equipment issue sheet
  - 17.5.7 health and safety inspections
  - 17.5.8 copies of public and employers liability insurance certificates
  - 17.5.9 Staff emergency contact information
  - 17.5.10 Staff training matrix
  - 17.5.11 relevant COSHH data sheets
  - 17.5.12 copy of employee health and safety handbook

## **18. Contract Monitoring**

The Contractor shall:-

- 18.1 provide to the Council by email and within one week of the contract award date, copies of any insurance, licences and/or permissions required to carry out the Contract.
- 18.2 be available to attend, as a minimum, once in every Financial Quarter, meetings with the Council's Framework Agreement Manager to discuss all aspects of the Framework Agreement. The date of each of these meetings shall be agreed between both parties. The performance of the Framework Agreement will be monitored to ensure it meets the Conditions of the Framework Agreement and Schedule 1 (Specification). Should any aspect of the Service not be delivered by the Contractor in accordance with the Conditions of the Framework Agreement and/or Schedule 1 (Specification), additional meetings will be held with the Council's Framework Agreement Manager as and when requested. Specific parameters are:

18.2.1 collection of Approved Waste from the Transfer Stations and/or Depots as per the Specification.

18.2.2 recording of Approved Waste.

18.2.3 invoicing and payment.

18.3 enable the Council to inspect and audit the Sites, plant and processes utilised in the provision of the service under this contract.

18.4 Carry out pre-acceptance audit requirements to comply with the Department of Health – Health Technical Memorandum 07-01: Safe management of healthcare waste and the Hazardous Waste Regulations 2005 or their equivalents prior to Commencement Date and then as required by the technical guidance.

## **19. Contingency**

The Contractor shall:-

19.1 Prior to the Commencement Date submit a method statement on dealing with severe weather conditions to ensure the continued provision of the Service, albeit reduced, in the case of high winds, snow and ice.

19.2 The Contractor shall provide the Council's Framework Agreement Manager with telephone numbers where a person in authority may be contacted during and outside normal working hours for contingency purposes.

19.3 Provide the Council with its Business Continuity Plan within **Bid Form 22** in accordance with Clause 27 within.

19.4 The Contractor is required to nominate and provide a contingency Treatment/Disposal Facility in the event that the nominated Treatment/Disposal Facility becomes unavailable for any reason.

19.5 The Contractor is to provide reasonable proof of the unconditional availability of the contingency Treatment/Disposal Facility. This unconditional availability should be demonstrated by the provision of a letter of intent from the operator of the alternative facility stating that the Waste will be accommodated, together with copies of the relevant Environmental Permit or exemption in respect of the type and quantities of Waste to be accepted.

19.6 The contingency facility(ies) will be provided at no additional cost to the WDA. The contingency facility is required to provide the same performance standards. If any contingency arrangement is to incur additional costs in terms of increased gate fee, Haulage and/or Landfill Tax or any other tipping costs etc, then Contractor will be responsible for these additional costs.

## **20. Access to the Framework Agreement by Participating Bodies**

20.1 The Contractor shall note that the Service shall be accessible to those public bodies identified in the advertised OJEU notice.

20.2 The Contractor shall note that each public body may have different requirements to those presented here.



### C. Location of the Waterdale Transfer Station

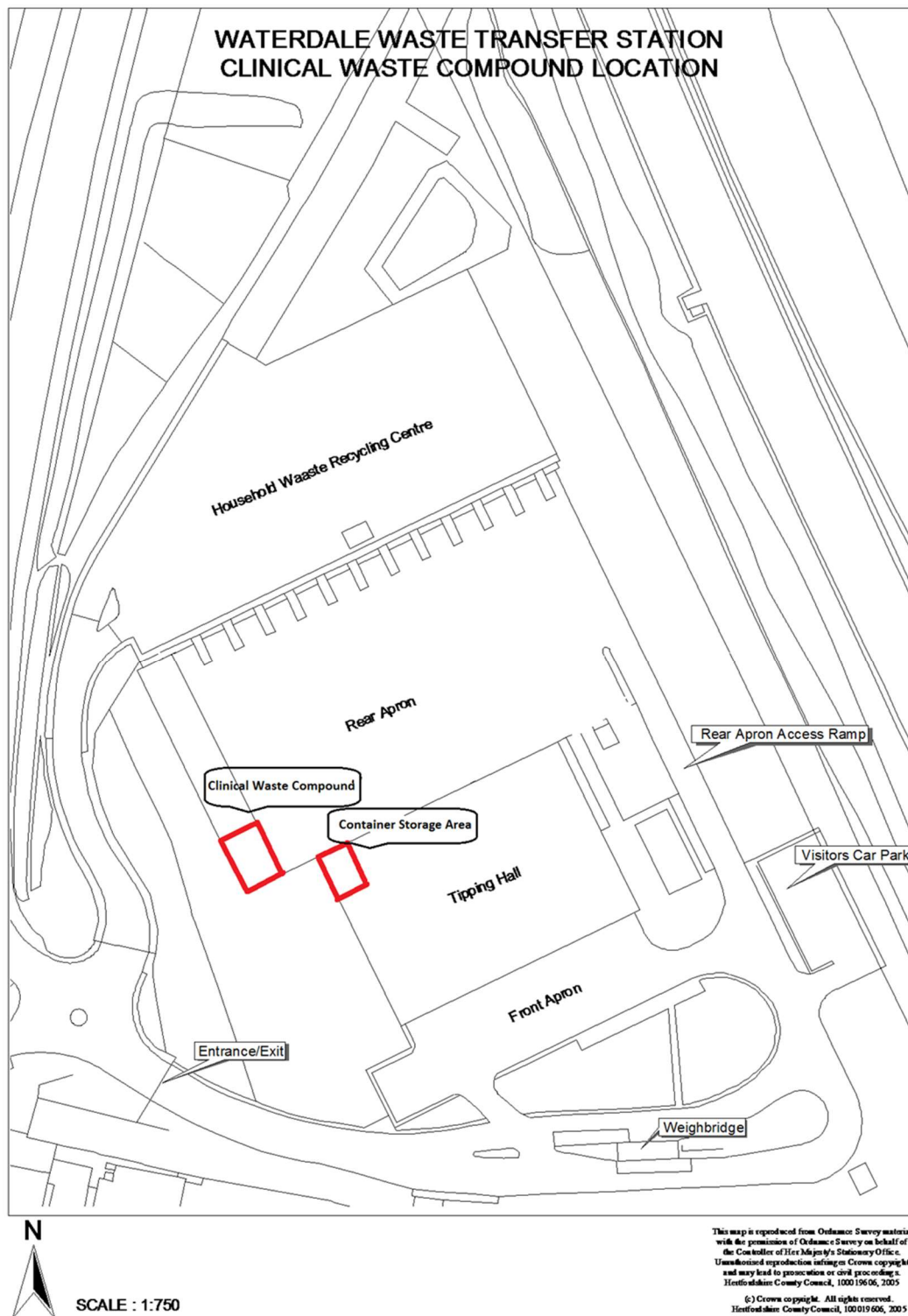
The Waterdale Transfer Station is located at Garston near Watford between the A405 and M1. Grid reference TQ 119 016 on OS Map Sheet 166 in the 1:50,000 series.

#### WATERDALE WASTE TRANSFER STATION LOCATION





**D. Location of the Clinical Waste Compound within the Waterdale Transfer Station**



## Appendix 1: European Waste Catalogue Codes

EWC Code	Description
18 01 01	sharps (except 18 01 03)
18 01 03*	wastes whose collection and disposal is subject to special requirements in order to prevent infection
18 01 04	wastes whose collection and disposal is not subject to special requirements in order to prevent infection(for example dressings, plaster casts, linen, disposable clothing, diapers)
18 01 08* 20 01 31	cytotoxic and cytostatic medicines
18 01 09	medicines other than those mentioned in 18 01 08
18 01 10*	amalgam waste from dental care
18 02 02*	wastes whose collection and disposal is subject to special requirements in order to prevent infection
18 02 03	wastes whose collection and disposal is not subject to special requirements in order to prevent infection



## Appendix 2: Accounting Period

### HERTFORDSHIRE COUNTY COUNCIL SCHEDULE OF WEEK NUMBERS, DATES AND ACCOUNTING PERIODS 2019/2020

QUARTER 1				QUARTER 3			
WEEK	START DATE	END DATE	PERIOD	WEEK	START DATE	END DATE	PERIOD
1	01/04/19	07/04/19	1	27	30/09/19	06/10/19	7
2	08/04/19	14/04/19		28	07/10/19	13/10/19	
3	15/04/19	21/04/19		29	14/10/19	20/10/19	
4	22/04/19	28/04/19		30	21/10/19	27/10/19	
5	29/04/19	05/05/19	2	31	28/10/19	03/11/19	8
6	06/05/19	12/05/19		32	04/11/19	10/11/19	
7	13/05/19	19/05/19		33	11/11/19	17/11/19	
8	20/05/19	26/05/19		34	18/11/19	24/11/19	
9	27/05/19	02/06/19	3	35	25/11/19	01/12/19	9
10	03/06/19	09/06/19		36	02/12/19	08/12/19	
11	10/06/19	16/06/19		37	09/12/19	15/12/19	
12	17/06/19	23/06/19		38	16/12/19	22/12/19	
13	24/06/19	30/06/19		39	23/12/19	29/12/19	
QUARTER 2				QUARTER 4			
WEEK	START DATE	END DATE	PERIOD	WEEK	START DATE	END DATE	PERIOD
14	01/07/19	07/07/19	4	40	30/12/19	05/01/20	10
15	08/07/19	14/07/19		41	06/01/20	12/01/20	
16	15/07/19	21/07/19		42	13/01/20	19/01/20	
17	22/07/19	28/07/19		43	20/01/20	26/01/20	
18	29/07/19	04/08/19	5	44	27/01/20	02/02/20	11
19	05/08/19	11/08/19		45	03/02/20	09/02/20	
20	12/08/19	18/08/19		46	10/02/20	16/02/20	
21	19/08/19	25/08/19		47	17/02/20	23/02/20	
22	26/08/19	01/09/19	6	48	24/02/19	01/03/20	12
23	02/09/19	08/09/19		49	02/03/20	08/03/20	
24	09/09/19	15/09/19		50	09/03/20	15/03/20	
25	16/09/19	22/09/19		51	16/03/20	22/03/20	
26	23/09/19	29/09/19		52	23/03/20	29/03/20	

### Appendix 3: WAMS System Specification Data File Format

Transaction details are required in a fixed format file containing the following columns.

Field Number	Field Name	Test Description	Data Required	Notes
1	Transaction Category	Required always	X	HCC will provide
2	Date	Required always	X	As per weighbridge details
3	Time In	Required always	X	As per weighbridge details
4	Time Out	Required always	X	As per weighbridge details
5	Tally Roll In	Required always	X	If none use 000000
6	Tally Roll Out	Required always	X	If none use 000000
7	Disposal Site Code	Required always	X	HCC will provide
8	Vehicle Registration	Required for some transactions	X	As per vehicle details
9	Vehicle Number	Required for some transactions	N/A	Field needed, but leave blank
10	Container No	Required for some transactions	N/A	Field needed, but leave blank
11	Round No	Required for some transactions	N/A	Field needed, but leave blank
12	HWS Site No	Required for some transactions	N/A	Field needed, but leave blank
13	Carrier Code	Required for some transactions	N/A	Field needed, but leave blank
14	Credit Customer ID	Required for some transactions	N/A	Field needed, but leave blank
15	Gross Weight	Required always	X	As per weighbridge details
16	Tare Weight	Required always	X	As per weighbridge details
17	Transfer Station/Depot Ticket Number	Required for some transactions	X	6 digit ticket number from Transfer Station
18	Compactor Number	Required for some transactions	N/A	Field needed, but leave blank

## SCHEDULE 2 – PERFORMANCE MONITORING/KPIs

### 1. Introduction

KPIs (Key Performance Indicators) provide the means for measuring and assessing Contractor performance using a robust and agreed set of criteria. These assessments also offer useful indication on the progress towards an organisational or change objective. Appropriate KPIs have been developed to effectively highlight areas of concern and lead to a focus for the operational and management team's attention.

Effective performance management is required to help ensure that the Contract delivers what is intended.

This Schedule contains the framework for managing the performance of the Contract. The Contractor is required to operate the framework for managing performance and evolve it throughout the life of the Contract Period. It includes a framework that supports effective service monitoring; measurement of continuous improvement and helps ensure ongoing focus.

The monitoring will involve collecting data on KPIs which monitor performance against base levels. Reporting and ongoing service monitoring is implicit within this – with continuous service improvements being the goal.

### 2. The Performance Monitoring System

Set out below is the framework for monitoring of the contract's KPIs. Each KPI identifies the specific section of **Schedule 1** (Specification) to which it refers.

No.	KPI	How KPI will be Monitored	Recording
1	The Contractor will Transport Approved Waste in accordance with section 7, 9 and 13 of <b>Schedule 1</b> (Specification) ensuring they comply with legislation regarding the safe Transport of Approved Waste on the public highway. Including that all vehicles/drivers used to collect Approved Waste from the Transfer Station comply with all relevant regulations and are ADR compliant.	Through provision of information from the Transfer Station Operator and ad hoc site visits to the Transfer Stations and/or Depots by the Council's Framework Agreement Manager to inspect the vehicles used.	The date of each incident when the Contractor does not Transport Containers in accordance with <b>Schedule 1</b> (Specification) shall be recorded.
2	The Contractor will Dispose of / Treat Approved Waste in accordance with paragraph 6 of <b>Schedule 1</b> (Specification) by a facility legally authorised for the Disposal/Treatment of such Waste. The Contractor shall ensure that all Approved Waste delivered to the Disposal/Treatment Facility is processed in accordance with the conditions of the site Environmental Permit, site working plan and all legislative requirements.	Through provision of information from the Contract Manager and ad hoc site visits to the Disposal/Treatment Facility by the Council's Framework Agreement Manager.  The Contractor shall provide copies of reports provided by the Environment Agency following the Environment Agency's inspections of the site.	The date of each incident when the Contractor does not Dispose of / Treat Approved Waste in accordance with <b>Schedule 1</b> (Specification).  The date of the Environment Agency report that highlights a failure to adhere to <b>Schedule 1</b> (Specification) shall be recorded.

3	In accordance to paragraph 7.1 of <b>Schedule 1</b> (Specification), the Contractor shall collect Approved Waste from the Transfer Station within 24 hours of a request from the Transfer Station Operator.	Should the Contractor fail to collect Approved Waste within three days the Transfer Station Operator shall inform the Council's Framework Agreement Manager.	The date of each incident of failure to collect Approved Waste from the Transfer Stations and/or Depots within three Working Days of a request for collection shall be recorded.
4	In accordance with paragraph 14 of <b>Schedule 1</b> (Specification) provide the Council's Framework Agreement Manager with details of the final destination of all Waste Disposed Of/Treated including all outputs from any processes, for example Incinerator Bottom Ash (IBA).	The date at which the information is provided to the Council's Framework Agreement Manager shall be used to monitor this KPI.	The date of any missed deadline to receive the information shall be recorded.
5	<p>In accordance to paragraphs 10.3 and 10.5 of <b>Schedule 1</b> (Specification), at the beginning of each week, normally on a Monday, the Contractor will supply the Council's Framework Agreement Manager with the following information relating to the previous week:</p> <ul style="list-style-type: none"> <li>a. The gross and tare weights of each Vehicle delivering Approved Waste to a Treatment/Disposal Facility</li> <li>b. tonnage figures for each waste type Treated/Disposed Of</li> </ul> <p>This information will be supplied within one (1) week.</p> <p>In accordance to section 16 of Schedule 1 (Specification), Tonnage figures for invoicing are to be provided within two (2) weeks of the previous period as identified in Appendix 2 of the Specification,</p>	Through provision of information from the Contractor to the Council's Framework Agreement Manager.	The date of each occurrence that the data is not received in the agreed form within a week of the period for which the data covers or is not to the quality standard agreed with the Council's Framework Agreement Manager shall be recorded.
6	In accordance with paragraph 15 of Schedule 1 (Specification) and Clause 13 Prices for Services and Financial Arrangements (Framework Agreement) provide the Council's Framework Agreement Manager with details of each Participating Bodies tonnage Disposed Of/Treated for each Waste type for the Financial Year. This information must be provided within one (1) month of the Accounting Period end.	Through provision of information from the Contractor to the Council's Framework Agreement Manager.	The date of each incident of failure to provide information.

### **3. Performance Monitoring**

The Contractor's performance in relation to the above KPIs will be discussed at Contract review meetings between the Contractor's Authorised Representative and the Framework Agreement Manager each Financial Quarter on dates specified in advance by the Council.

Should there be a failure to adhere to any of the KPIs, a performance review meeting between the Contractor's Authorised Representative and the Framework Agreement Manager will be held on a date specified by the Council to discuss the specific performance issue; this will be in addition to the quarterly Contract review meeting.

### **4. KPI Failure**

In the event of a failure to adhere to any of the KPIs, a date no further than two weeks after the review meeting by which that failure must be remedied shall be agreed during the review meeting. Should the issue not have been rectified by the allocated date, a further performance review meeting between the Contractor's Authorised Representative and the Framework Agreement Manager will be held during which formal written notice of the need to remedy the performance failure shall be delivered to the Contractor's Authorised Representative.

Should the Contractor fail to adhere to any of the KPIs for a period of three (3) months following the delivery of formal written notice to remedy the performance failure, or commit a Persistent Breach, the Council may terminate the Contract in accordance with Clause 15.1.5.8 of the Call Off Contract.

### **5. Liquidated Damages**

Liquidated Damages allow for the payment of a specified sum should the Contractor be in breach of Contract. Where actual damages are difficult to ascertain this seeks to be a fair representation of losses incurred. These Liquidated Damages are meant to be fair rather than punitive and as such seek to reimburse the Council for losses caused by the Contractor.

Payments of Liquidated Damages shall fall into two categories as follows:

1. Where contractual breaches or non-performance have had to be rectified at additional cost, over and above that within the Contract, to the Council.
2. Where, as a result of contractual breach, unavailability or non-performance, the Council has suffered a loss of service and/or a financial loss.

The costs calculation of Liquidated Damages for the Contract are shown below; they include 'specific costs' incurred by the Council as a result of the breach of Contract and 'staff and administration costs' to cover the extra Council employees' time and resource expenditure as a result of the breach of Contract.

The total cost for each row will be the addition of the actual 'specific cost' incurred and the 'staff and administration cost charge' shown in the far right column.

Description	Specific Cost	Specific and Administration Cost Charge	Staff and Administration Costs for each Occurrence	Staff and Administration Cost Charge
Failure to Transport Waste in accordance with KPI 1.	Cost of Transport provision.  Total specific costs x15% to cover Administration Costs	Will only be known at time of breach.	1 hour x Council's Framework Agreement Manager's time.  Total staff x15% to cover Administration Costs.	£35.29
Failure to Dispose of / Treat Waste in accordance with KPI 2.	Cost of disposal of the Waste.  Total specific costs x15% to cover Administration Costs	Will only be known at time of breach.	1 hour x Council's Framework Agreement Manager's time.  Total staff x15% to cover Administration Costs.	£35.29
Additional meetings between the Contractor and the Council's Framework Agreement Manager in the event that an Environment Agency report highlights a failure to adhere to paragraph 6 of <b>Schedule 1</b> (Specification) in accordance with KPI 2.	Not applicable	Not applicable	4 hours x Council's Framework Agreement Manager's time  Total staff x15% to cover Administration Costs.	£141.17
Failure to collect Waste from the Transfer Stations and/or Depots within 24 hours in accordance to KPI 3.	Cost of Haulage and disposal of the Waste.  Total specific costs x15% to cover Administration Costs	Will only be known at time of breach.	0.5 hours x the Transfer Station Operator's hourly wage (£)  1 hour x the Council's Framework Agreement Manager's hourly wage (£)  Total staff x15% to cover Administration Costs.	£48.93

Failure to provide information within the deadline specified in KPI 4.	Any fine by Defra for missing a Wastedataflow deadline which is specifically due to the Contractor's failure to provide the information within the specified timescale.  Total specific costs x15% to cover Administration Costs	Will only be known at time of breach.	1 hour x officer responsible for Wastedataflow's hourly wage (£)  Total staff x15% to cover Administration Costs.	£23.91
Failure to provide information and data in the agreed method in accordance to KPI 5.	Not applicable	Not applicable	0.5 hours x Senior Support Officer's hourly wage (£)  0.5 hours x Performance and Data Manager's hourly wage (£)  Total Staff costs x15% to cover Administration Costs.	£27.13
Failure to provide the Council's Framework Agreement Manager with information in accordance with KPI 6.	Not applicable	Not applicable	0.5 hours x the Council's Framework Agreement Manager's hourly wage (£)  Total Staff and specific costs x15% to cover Administration Costs.	£17.65

The 'staff and administration costs' cover costs to the Council above the individuals' pay grade including Local Government Pension Scheme (LGPS) and employer National Insurance (NI) contributions. The charges stated in the above table will be inflated using the Consumer Price Index (CPI); the price change will come into effect on the April following the annual anniversary of the Commencement Date and will remain fixed for twelve (12) months thereafter.

## **SCHEDULE 3 - CHANGE CONTROL PROCEDURE**

### **1. Introduction**

1.1 **Schedule 3** details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the Framework Agreement.

- a. The Council may propose a variation to the Framework Agreement under **Schedule 3** only where the variation does not amount to a material change in the Framework Agreement or the Services.

### **2 Procedure for proposing a Variation**

- a. Except where paragraph 5 applies, the Council may propose a variation using the procedure contained in this paragraph 2.
- b. In order to propose a variation, the Council shall serve the Contractor with written notice of the proposal to vary the Framework Agreement ("Notice of Variation").
- c. The Notice of Variation shall:-
  - i. contain details of the proposed variation providing sufficient information to allow the Contractor to assess the variation and consider whether any changes to the prices in the Tender response document are necessary; and
- d. Upon receipt of the Notice of Variation, the Contractor has seven (7) days to respond in writing with any objections to the variation.
- e. Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Council may then serve the Contractor with a written agreement detailing the variation to be signed and returned by the Contractor within seven (7) days of receipt.
- f. Upon receipt of a signed agreement from the Contractor, the Council shall notify the Contractor in writing of the commencement date of the variation.

### **3 Objections to a Variation**

- a. In the event that the Council receives one or more written objections to a variation, the Council may:-
  - ii. withdraw the proposed variation; or
  - iii. propose an amendment to the variation.

### **4 Changes to the Pricing Matrices**

- a. Where the Contractor can demonstrate that a variation would result in a change to the prices, the Council may require further evidence from the Contractor that any additional costs to the Contractor will be kept to a minimum and shall not result in a material change to the Call Off Contract.
- b. The Council may require the Contractor to meet and discuss any proposed changes to the price that would result from a variation.
- c. Where a change to the price is agreed by the Council, the Council shall notify its acceptance of the change to the Contractor in writing.



d. In the event that the Council and the Contractor cannot agree to the changes to the price, the Council may:-

iv. withdraw the variation; or

v. propose an amendment to the variation

## **5 Variations which are not permitted**

a. In addition to the provisions contained in paragraph 1.2, the Council may not propose any variation which:-

i. may prevent the Contractor from performing its obligations under the Framework Agreement; or

ii. is in contravention of any Law.

## **6 Change Control Notice**

Variations agreed by the Parties shall be based upon the pro forma set out in Appendix 1.

#### **SCHEDULE 4 - INSTRUCTIONS TO TENDERERS**

This will be inserted here upon award.

**SCHEDULE 5 - TENDER RESPONSE DOCUMENT**

This will be inserted here upon award.

**SCHEDULE 6 - COPY OF FRAMEWORK AGREEMENT AWARD LETTER**

This will be inserted here upon award

**SCHEDULE 7 - NOT USED**

**SCHEDULE 8 - ANY OTHER RELEVANT CORRESPONDENCE**

This will be inserted here upon award if applicable

## SCHEDULE 9 - ORDER FORM

### FROM

<b>“Authority”</b> (Hertfordshire County Council/ Participating Body)	
<b>Services Address</b>	[INSERT ADDRESSES OR REFER TO APPENDIX IF THE ADDRESSES ARE TO BE SET OUT THEREIN]
<b>Invoice Address</b>	
<b>Authority's Framework Manager:</b>	Name: Phone: E-mail:
<b>Unique Order Reference Number</b>	(Order Number is to be quoted on all correspondence relating to this Order.)
<b>Order Date</b>	

### TO

<b>Provider:</b>	[INSERT CONTRACTOR'S NAME]
<b>For the attention of:</b>  <b>E-mail</b>  <b>Telephone number</b>	
<b>Address</b>	

1. THE SERVICES
  - 1.1. [as specified in the Specification (Schedule 1) and/or defined here or in the mini competition documents]
2. TIMETABLE
  - 2.1. [[as defined here or in the mini competition documents]
3. POINTS OF CONTACT FOR DISPUTE RESOLUTION
  - 3.1. [Authority's first point of contact for dispute resolution purposes to be inserted here]
  - 3.2. [Authority's second point of contact for dispute resolution purposes to be inserted here]
4. ADDITIONAL MANAGEMENT INFORMATION REQUIREMENTS
  - 4.1. [Authority's additional requirements]
5. PROPOSED SPECIAL TERMS
  - 5.1. [as per the Call-Off Contract]

**FRAMEWORK AGREEMENT FOR THE**  
**PROVISION OF**  
**COLLECTION AND DISPOSAL OF CLINICAL**  
**WASTE, OFFENSIVE WASTE AND SMALL**  
**ANIMAL REMAINS**

**REF: HCC1911137**

**CALL-OFF CONTRACT BETWEEN**

**{COUNCIL/PARTICIPATING BODY}**

**-AND-**

**{INSERT NAME OF THE CONTRACTOR}**

---



**THIS CALL-OFF CONTRACT** is made the ..... day of.....201[ ]

BETWEEN

**Council/Participating Body** of [ ], (the "Authority") of the one part,

and

**Contractor** (Company No: ..... ) of [ ], (the "Contractor") of the other part.

#### WHEREAS

1. For the purposes of the Public Contracts Regulations 2015 (the "Regulations") the Authority is a Contracting Authority and the Contractor is an economic operator (Regulation 2(1));
2. Hertfordshire County Council publicised its intention to conclude a Framework Agreement, using the open procedure and indicated the contracting authorities entitled to award a specific contract (a "Call-Off" Contract) for its own geographical area, based on the Framework Agreement in accordance with Regulation 33 of the Regulations;
3. Hertfordshire County Council, acting as a central purchasing body, concluded the Framework Agreement (reference HCC1608717) with the Contractor on [ ] 201[X] for the provision of the collection and disposal of clinical waste, offensive waste and small animal remains ("the Framework Agreement"); and
4. The Authority is one of the Contracting Authorities entitled to award a Call-Off Contract ("the Call-Off Contract") based on the afore-mentioned Framework Agreement and the Authority now wishes to award a Call-Off Contract to the Contractor;

**NOW IT IS AGREED** between the Authority and the Contractor as follows:

1. The Contractor shall provide the Services to the Authority in accordance with the provisions of the Framework Agreement and this Call-Off Contract to the reasonable satisfaction of the Authority for the Call-Off Contract Period and at the rates and prices set out in the Pricing Schedule (but subject to revision in accordance with the provisions of this Call-Off Contract).
2. So long as the Contractor shall continue to provide the Services in accordance with the provisions of this Call-Off Contract and to the satisfaction of the Authority, the Authority shall make to the Contractor the payments provided by the Contractor in accordance with the provisions of this Call-Off Contract and the Framework Agreement for the Services.
3. The Services to be provided are specified in **Schedule 9** and the Order Form.

#### CONDITIONS OF CONTRACT

##### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions in the Framework Agreement shall apply to this Call-Off Contract:

**"Affected Party"** means a party affected by a Force Majeure Event;

**"Authority's Framework Manager"** means the person appointed as such as per the Order Form to manage any Call-Off Contract

	entered into by the Council or any Participating Body;
<b>“Authority’s Equipment”</b>	means all equipment, parts, materials, articles and/or mechanisms provided by the Contractor for use in the provision of the Services;
<b>“Authority’s Premises”</b>	means any premises owned by the Council or Participating Body for which the Council has legal responsibility;
<b>“Business Continuity Plan”</b>	means a plan agreed between the Parties to provide effective prevention and recovery in connection with the Services if the Services are exposed to internal or external threats;
<b>“Charging Period”</b>	means the <b>[insert period]</b> period identified in the Call-Off Contract when an invoice is required to be submitted by the Contractor to the Authority for payment of the Services;
<b>“Contractor’s Equipment”</b>	means all equipment, parts, materials, articles and/or mechanisms provided by the Contractor for use in the provision of the Services;
<b>“Contractor’s Premises”</b>	means any premises owned by the Contractor or for which the Contractor has legal responsibility;
<b>“Default”</b>	means any breach of the obligations of the Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of that Party or its personnel in connection with or in relation to the subject-matter of the Call-off Contract and in respect of which such Party is liable to the other;
<b>“Force Majeure Event”</b>	<p>means any event materially affecting the performance by a Party of its obligations under this Framework Agreement arising from any act, event, omission, happening or non-happening beyond its reasonable control including, but not limited to:</p> <p>fire, flood, earthquake, windstorm or other natural disaster; epidemic or pandemic; terrorist attack; nuclear, chemical or biological contamination; compliance with any governmental order, governmental rule or governmental regulation which comes into effect after the Commencement Date; loss at sea; extreme adverse weather conditions; interruption or failure of utility service;</p>
<b>“Guarantee”</b>	means the parent company guarantee in the form set out in <b>Schedule 7</b>

**“Intellectual Property Rights” or  
“IPR”**

means all intellectual and industry property or patents, registered trademarks, registered rights including designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

**“Replacement Contractor”**

means any third party appointed by the Council from time to time to provide all or any of services which are substantially similar to any of the Services, or received in substitution for any of the Services, following the expiry, termination or partial termination of this Contract whether those services are provided by the Council internally and/or by any third party;

**“Subcontractor”**

means the contractors or service contractors that enter in a subcontract with the Contractor under a Call-Off Contract

**2. FORM OF CALL OFF CONTRACT**

- 2.1 The Services shall be provided in accordance with the Framework Agreement together with its Schedules and this Call-Off Contract including appendices attached hereto.
- 2.2 Following the formation of a binding Call-Off Contract no deletion from, addition to, or variation of the terms herein shall be valid or have any effect unless agreed in writing and signed by the parties.
- 2.3 In the event of any inconsistency between this Call-Off Contract and any provisions in the Framework Agreement this Call-Off Contract shall prevail.
- 2.4 The headings contained in this Call-Off Contract are for reference purposes only and shall not be incorporated into the document and shall not be deemed to be any indication of the meaning of the clause to which they relate.
- 2.5 Both parties to this Call-Off Contract shall act in good faith towards each other in relation to all matters arising under it and in particular:
  - 2.4.1 both parties shall do all things reasonably within their power, which are necessary or desirable to give effect to the spirit and intent of this Call-Off Contract and its fundamental objectives, and
  - 2.4.2 the Authority’s Framework Manager shall be given all information and other facilities he may require to ensure that the Contractor is fulfilling its obligations under this Call-Off Contract.

### **3. CALL-OFF CONTRACT PERIOD**

- 3.1 Subject to the provisions relating to termination in the Framework Agreement the Call-Off Contract shall commence on [ ] ("Start Date") and shall continue for [ ] months/years.
- 3.2 If the period in **Clause 3.1** above is extended, the terms and conditions of this Call-Off Contract shall apply to any such extension except as varied by agreement between the Parties.

### **4. PROVISION OF SERVICES**

- 4.1 The Contractor shall provide the Services in accordance with the provisions of the Framework Agreement and as specified in this Call-Off Contract.
- 4.2 The Contractor will be responsible for the delivery of the Services purchased under this Call-Off Contract.
- 4.3 The Authority will be responsible for giving the Contractor sufficient and appropriate information about the Service to be provided.

### **5. VARIATIONS**

- 5.1 The Authority's Framework Manager shall be entitled to issue to the Contractor instructions in writing in the form specified in **Appendix 1** (Change Control Notice) upon reasonable notice requiring the Contractor to do all or any of the following for such period as the Authority's Framework Manager may fix in relation to this Call-Off Contract:

- 5.1.1 omit and to cease to perform any part of the Services upon provision of no less than 30 days' written notice;
- 5.1.2 perform the Services or any part in such manner as the Authority's Framework Manager may require;
- 5.1.3 perform such additional services as the Authority's Framework Manager may require provided that such additional services shall be the same as or similar to the Services under this Call-Off Contract;
- 5.1.4 vary the Order Form (**Schedule 9**) and to perform the Services in accordance with the Order Form as so varied;
- 5.1.5 comply with amended procedures;

provided always the Contractor shall immediately carry out all such instructions as soon as reasonably practicable where no time period for carrying out such instructions have been agreed between the parties. No such Change Control Notice shall in any way vitiate or invalidate the Framework Agreement.

- 5.2 Where as a result of an instruction given pursuant to clause 5.1 the Contractor:

- 5.2.1 properly directly and reasonably incurs any expense beyond that provided for in this Call-Off Contract (or the Framework Agreement as the case may be) and beyond what would reasonably have been foreseen by an experienced Contractor at the time of the tender or initial Call-Off Contract; or
- 5.2.2 makes or reasonably shall be expected to make any saving in the cost of delivering the Services,

**THEN** the Authority shall reimburse to the Contractor such reasonable additional expense so incurred or the Contractor shall allow to the Authority the savings arising (as the case may be).

5.3 The value of any additional payment to be made or saving to be allowed in respect of a Variation shall be ascertained by the Authority's Framework Manager as follows:

- 5.3.1 where the Services to be valued are priced by the Contractor in the Pricing Schedule (**Schedule 5**) then in force or are of similar character to and are to be executed or have previously been executed under similar conditions to services so priced then it shall be valued at such rates and prices in such Pricing Schedule as are applicable (and for the avoidance of doubt this shall apply where the Variation is the addition or removal of one or more Services from the list of those to be provided to the Authority);
- 5.3.2 where the Services to be valued are not priced in the Pricing Schedule (Schedule 5) and are not of similar character or are not to be and have not been executed under similar conditions then the parties shall, acting reasonably, agree the rates and prices that should apply;
- 5.3.3 the Authority's Framework Manager shall within 28 days of issuing a Change Control Notice issue a certificate indicating what the Authority's Framework Manager believes to be the true valuation of the instruction based on the agreement between the parties or the existing rates prices until such time as the parties shall agree the rates and prices (whether an increase in the costs of the Contractor or a saving) and what rates and prices are applicable;
- 5.3.4 if the Contractor notifies the Authority's Framework Manager in writing within 7 days (referring specifically to this Clause) that the Contractor does not accept such decision then the procedure in **Clause 5.4** shall be followed. Where no such notice is received within such period the Contractor shall be deemed to have accepted the decision;
- 5.3.5 from the date that Services commence under the Change Control Notice (and unless and until such Change Control Notice is revoked or expires) for the purpose of calculating the monies due to the Contractor under this Call-Off Contract payment shall be made on the basis of rates as ascertained pursuant to 5.3.3 or (in the case of a dispute) 5.4;
- 5.3.6 however, if the final amount of such rates are not known when Services commence then payments shall be made on the basis of provisional adjustments to be made in accordance with the certificate issued by the Authority's Framework Manager pursuant to 5.3.3 above and a final reconciliation and adjustment shall be made when the final figures are ascertained;
- 5.3.7 notwithstanding the foregoing provisions of this **Clause 5.3** if the nature or degree of any Variation relative to the nature or degree of the whole of the Services under the Framework Agreement or to any part thereof shall be such that in the opinion of the Authority's Framework Manager or the Contractor any rate or price contained in the Framework Agreement for any item of service is by reason of such Variation rendered unreasonable or inapplicable either the Authority's Framework Manager or the Contractor shall give to the other written notice before the Variation Service is commenced or as soon as thereafter as is reasonable in all the circumstances that such rate or price should be varied and in default of agreement the matter shall be referred to dispute resolution in accordance with **Condition 38** until such newly ascertained rate or price is ascertained calculations will be based on the existing rate or price and an adjustment and reconciliation made once the newly ascertained rate or price is known.

5.4 The Contractor:

- 5.4.1 shall keep such contemporary records of all costs staff supplied and other matters as may be reasonably necessary to support any such claim brought by the Contractor under clause 5.3.7 above;
- 5.4.2 without prejudice to the provisions of 5.4.1 above and without admitting the correctness of the Contractor's claim the Authority's Framework Manager and Contractor may agree in writing which specific contemporary records or additional contemporary records or categories thereof (as the case may be) which the Authority's Framework Manager and the Contractor agree are reasonably required for the purposes of evaluating the Services and which the Contractor shall keep for the duration of the Call-Off Contract;
- 5.4.3 the Contractor shall permit the Authority's Framework Manager upon reasonable written notice and during business hours to inspect all records kept pursuant to this clause 5.4 and shall supply at the cost of the Contractor copies of such records as and when the Authority's Framework Manager shall request them provided that the parties shall have agreed which party shall bear the costs of providing such copies;
- 5.4.4 after the giving of a notice to the Authority's Framework Manager under clause 5.3.4 the Contractor shall as soon as is reasonable in all the circumstances send to the Authority's Framework Manager an account giving full and detailed particulars of the amount claimed to that date and of the grounds upon which the claim is based. Thereafter at such intervals as the Authority's Framework Manager may reasonably require the Contractor shall send to the Authority's Framework Manager further up-to-date accounts giving the accumulated total of the claim and any further grounds on which it is based;
- 5.4.5 the Authority's Framework Manager shall consider the records supplied by the Contractor (and their adequacy or otherwise) and any other information that he may consider relevant in assessing the reasonable additional amount incurred or saving made by the Contractor and shall within 21 days of the date of the notice from the Contractor under 5.3.4 give the Contractor a further certificate stating the Authority's Framework Manager's decision on the disputed matter and the reasons for this;
- 5.4.6 if the Contractor agrees the certificate issued under 5.4.5 he shall indicate this in writing and the amounts due to each party shall be adjusted accordingly;
- 5.4.7 if the Contractor does not agree the certificate he shall give written notice of this within 14 days to the Authority and the matter shall be referred to mediation under **Condition 38**.

**6. MISCELLANEOUS**

- 6.1 A reference to any Act of Parliament or to any Order Regulation Statutory Instrument By-law or the like shall include a reference to any amendment or re-enactment thereof.
- 6.2 Words importing the masculine gender include the feminine gender, words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations.
- 6.3 References to the word 'including' are to be construed without limitation.

- 6.4 All communications whether oral or written between the Contractor and the Authority or between the Contractor and any third part on behalf of the Authority shall be conducted in the English language.
- 6.5 The Authority shall have the right to inspect and examine the Contractor's performance to ensure that it is complying with its obligations under this Call-Off Contract at all times. Such inspection or examination shall not release the Contractor from any of its obligations under this Call-Off Contract or affect the Authority's statutory rights.
- 6.6 The Contractor shall on arrival at any premises of the Authority report to the relevant officer in charge, or their representative, in accordance with the instructions issued by the Authority's Framework Manager.
- 6.7 The Contractor's Personnel shall at all times maintain the highest standards of courtesy and consideration in all aspects of the performance of this Call-Off Contract.
- 6.8 The Contractor shall supply to the Authority's Framework Manager the Management Information identified in the Order Form in **Schedule 9** of this Call-Off Contract in addition to such information required as set out in the Specification (Schedule 1) in the Framework Agreement as the case may be) or such other information as the Authority's Framework Manager may from time to time specify during the term of this Call-Off Contract.
- 6.9 Provided that the Contractor's Authorised Representative is given reasonable notice of the same, the Contractor's Authorised Representative shall attend meetings where an issue related to the Services is to be considered unless an emergency situation arises, as determined by the Authority's Framework Manager in which case the Contractor's Authorised Representative may be required to attend a meeting with the Authority's Framework Manager at short notice.
- 6.10 The Contractor shall comply with the security requirements of the Authority as detailed in the Specification and such other security measures as are from time to time introduced by the Authority at any of its premises.

## **7. LAW**

This Call-Off Contract shall be subject to English Law in all respects and shall be construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.

## **8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Call-Off Contract does not create any right enforceable by any person not a party to it nor does it create any right enforceable by a third party under the Contracts (Right of Third Parties) Act 1999.

## **9. CONFLICT OF INTEREST**

### **9.1 The Contractor shall:**

- 9.1.1 use all reasonable endeavours to ensure that no conflict of interest arises in respect of its duties under this Call-Off Contract;
- 9.1.2 make all reasonable enquiries to ensure that there is no conflict of interest prior to accepting any commission;
- 9.1.3 adopt and apply the rules on conflict of interest contained in any guidance on the topic issued by the trade and professional bodies governing the conduct of the professional staff employed in the provision of the Services;

- 9.1.4 disclose any interest in or contractual relationship with any person engaged or nominated by Authority;
- 9.1.5 procure that the Contractor's staff disclose any interest in or contractual relationship with any person engaged or nominated by the Authority;
- 9.1.6 consult with and advise the Authority if the Contractor considers that a conflict of interest has arisen or may arise and shall furnish the Authority with all such information as the Authority may reasonably require to enable it to determine whether or not such conflict has arisen or may arise;
- 9.1.7 (without prejudice to the provisions of **Condition 19** of the Framework Agreement) not at any time during the Call-Off Contract Period or for one year thereafter use knowledge about the Authority obtained in the performance of its duties hereunder so as to prejudice the interest of the Authority in any manner whatsoever; and
- 9.1.8 devise and operate such internal arrangements as may reasonably be anticipated to eliminate potential conflicts of interest and shall inform the Authority of the nature of those arrangements prior to the Start Date of this Call-Off Contract and on demand by the Authority from time to time thereafter.

- 9.2 If the Authority considers that a conflict of interest has arisen or may arise and that the Contractor should not continue to perform its duties under this Call-Off Contract or any part thereof or in respect of any commission the Authority may at its discretion determine the employment of the Contractor to the corresponding extent or require this Call-Off Contract to cease such activities as give rise to the conflict of interest and to continue with its duties hereunder.

## 10. **NOTICES**

- 10.1 Any notice to be given in relation to this Call-Off Contract shall be construed in accordance with **Condition 36** of the Framework Agreement.
- 10.2 The address of each Party shall be the Authority's Framework Manager and the Contractor Authorised Representative:

Name: [ ],  
 Tel: [ ],  
 Email address: [ ].

## 11. **CALL-OFF CONTRACT PRICE AND PAYMENT**

- 11.1 Within ten (10) Working Days of the end of each Charging Period, the Contractor shall submit an invoice to the Authority for the attention of the Authority's Framework Manager showing the payment required for Services or parts thereof provided during that Charging Period (inclusive of any VAT payable).
- 11.2 The invoice shall include details of all calculations to show how the sums charged have been calculated (including any deductions or discounts that have been applied) and VAT information required in accordance with **Clause 13 (Value Added Tax)** below.

### **Undisputed invoices**

- 11.3 Each uniquely numbered invoice shall contain all appropriate references including the Authority's official order number and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Authority's Framework Manager to substantiate the invoice.



- 11.4 Within thirty (30) Calendar Days of receipt of an invoice the Authority will arrange payment by BACS (Bankers Automated Clearing Services) of the undisputed sums due for Services provided in accordance with the Call-Off Contract. The Authority will only confirm payment has been received electronically if an e-mail address has been provided by the Contractor to the Authority in advance to facilitate this.
- 11.5 Payment is deemed to have been made when the Authority transmits payment for processing to its BACS Bureau and the Contractor accepts that if a non-Working Day falls near the transmission of payment that this may extend the period before the payment will arrive in the Contractor's account.

#### **Disputed invoices**

- 11.9 The Authority may withhold payment of any disputed amount pending agreement or determination of the Contractor's entitlement to the disputed amount. In the event of any dispute regarding an invoice which has been notified to the Contractor, the Contractor shall issue a new invoice for the disputed amount and a new separate invoice for the undisputed amount.
- 11.10 Within thirty (30) Calendar Days of receipt of the Authority's Framework Manager of the invoice from the Contractor in accordance with **Clause 11.9**, the Authority's Framework Manager shall check the invoice and if the Authority's Framework Manager disputes the Contractor's entitlement to any part of the amount claimed the Authority's Framework Manager shall notify the Contractor in writing that part of the amount (insofar as the Authority's Framework Manager is reasonably able to quantify it at that point in time) which the Authority's Framework Manager disputes and submit to the Contractor such supporting evidence as it may have.
- 11.11 Once a disputed invoice has been agreed between the Parties, payment shall be due from the Authority to the Contractor within thirty (30) Calendar Days of receipt by the Authority's Framework Manager of a revised invoice ("**Due Date**"). If the Authority fails to make payment by the Due Date of an undisputed invoice, the Contractor may charge interest at the Prescribed Rate from the day falling fifteen (15) Working Days after the Due Date. The Contractor must raise a separate invoice in order to initiate any such payment for interest.
- 11.12 Any dispute which remains unresolved between the Parties arising from the provisions of this **Clause 11** shall be resolved in accordance with **Clause 38 (Dispute Resolution)** of the Framework Agreement. If the determination of any such dispute shows that:
- 11.12.1 the Authority has withheld any amount which the Contractor was entitled to be paid, the Authority shall pay such amount to the Contractor;
- 11.12.2 the Contractor has claimed under this **Clause 11** any amount which it was not entitled to be paid, the Contractor shall repay such amount to the Authority with interest in each case on that amount at the Prescribed Rate from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.
- 11.13 The Authority may reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 11.14 The Contractor shall not suspend the provision of Services for failure by the Authority to pay disputed charges in connection with this Call-Off Contract.

- 11.15 No debt incurred in the delivery of this Call-Off Contract may be assigned without the prior written permission of the Authority.

## **12. RECOVERY OF SUMS DUE**

- 12.1 Wherever under this Call-Off Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of this Call-Off Contract), the Authority may deduct that sum from any sum then due, or which at any later time may become due to the Contractor under this Call-Off Contract or any other Call-Off Contract with the Contractor.
- 12.2 Any overpayment by the Authority to the Contractor shall be recoverable by the Authority.
- 12.3 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has obtained the prior Approval of the Authority to such deduction.

## **13. VALUE ADDED TAX**

- 13.1 Any consideration due in respect of taxable supplies under this Call-Off Contract is exclusive of VAT.
- 13.2 If this Call-Off Contract or anything in it gives rise to a taxable supply for VAT purposes on the production of a valid VAT invoice the appropriate Party shall pay to the other a sum equal to that VAT in addition to the relevant consideration.
- 13.3 The appropriate Party shall provide to the other any information reasonably requested in relation to the amount of VAT chargeable in accordance with this Call-Off Contract.
- 13.4 A VAT invoice will not be valid for the purposes of charging VAT if more than forty-eight (48) Months have elapsed since the time of supply.
- 13.5 It is agreed that neither Party shall be liable for any penalties or interest arising from the accounting nor the failure of the other to account to HM Revenue and Customs at the correct time for any VAT correctly due in relation to the consideration referred to in this **Clause 13**. The Contractor shall be liable to the Authority for any losses, costs and/or expenses the Authority incurs as a result of the Contractor accounting or the failure of the Contractor to account to HM Revenue and Customs at the correct time for any VAT correctly due in connection with this Call-Off Contract.

## **14. PARENT COMPANY GUARANTEE**

- 14.1 If the Contractor is a subsidiary company within the meaning of Section 736 of the Companies Act 1985, a Guarantee should be provided in the form set out in **Appendix 3** by its holding company or companies (as defined by the said Section 736) to secure the due performance by the Contractor of its obligations to the Authority.
- 14.3 The Contractor shall procure that prior to the commencement of any extension of this Call-Off Contract, Bond and/or Guarantee (as appropriate) shall be provided by its bondsman or parent company approved by the Authority.
- 14.4 Failure to comply with this **Clause 14** shall entitle the Authority to terminate this Call-Off Contract in accordance with **Clause 15.1.5.7 (Termination)**.

## **15. TERMINATION**

15.1 The Authority may by notice in writing with immediate effect (or at such later date as it may specify) terminate this Call-Off Contract in whole if any one of the events set out in this **Clause 15.1** occurs -:

15.1.1 if the Contractor breaches the provisions of **Condition 9** (*Bribery, Corruption, Gratuities and Fraud*) of the Framework Agreement;

15.1.2 has offered or agreed to pay or gave or did pay or give any sum of money inducement or valuable consideration directly or indirectly to any person in respect of an act or omission in relation to any other tenderer or proposed tenderer for the Services;

15.1.3 if at any time it is discovered by the Authority that the Contractor-:

15.1.3.1 has fixed or adjusted the amount of its tender for this Call-Off Contract by or in accordance with any Call-Off Contract or arrangement with any other person; or

15.1.3.2 communicated to any person other than the Authority the amount or approximate amount of its proposed tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the tender) or;

15.1.3.3 entered into any contract or arrangement with any other person that it would refrain from tendering or as to the amount of any tender to be submitted; or

15.1.4 if the Contractor:-

15.1.4.1 ceases to carry on the whole or a substantial part of its business or disposes of the whole or a substantial part of its assets which in the reasonable opinion of the Authority would adversely affect the delivery of the Services;

15.1.4.2 the majority of shares carrying a right to vote in the Contractor or its Holding Company are acquired by a person who is not at the Start Date a majority shareholder;

15.1.4.3 has an application made under the Insolvency Act 1986 in its respect to the Court for the appointment of an administrative receiver;

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

15.1.4.5 has a liquidator receiver or manager of its business or undertaking duly appointed;

15.1.4.6 has an administrative receiver as defined in the Insolvency Act 1986 or the Companies Act 2006 appointed;

15.1.4.7 has a proposal made for a voluntary arrangement for a composition in satisfaction of debts or a scheme of arrangement of the Contractor's affairs approved in accordance with the Insolvency Act 1986;

- 15.1.4.8 has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;
- 15.1.4.9 is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver a manager or administrative receiver or which entitles the Court to make a winding-up order;
- 15.1.4.10 has an administration order made in respect of it;
- 15.1.4.11 the Contractor undergoes a change of control, within the meaning of section 450 of the Corporation Tax 2010, which in the opinion of the Authority impacts adversely and materially on the performance of this Call-Off Contract.

The Authority at its sole discretion may appoint a Replacement Contractor on the same terms and conditions as this Call-Off Contract as a result of corporate restructuring, including takeover, merger, acquisition or insolvency of the Contractor provided that the Replacement Contractor meets the pre-qualification criteria *and* the change in contractor does not result in any other substantial amendments to the Call-Off Contract.

- 15.1.5 The Authority may terminate this Call-Off Contract in whole or in part by notice in writing with immediate effect if at any time the Contractor:-

- 15.1.5.1 fails to achieve the requirements as stated in **Schedule 2** of the Framework Agreement
- 15.1.5.2 fails to comply with any statutory duty or requirement in so far as such duty or requirement affects or relates to the Services, including the loss of any statutory licence or certification which is required for the performance of the Services or as otherwise required by the Call-Off Contract;
- 15.1.5.3 does anything which has the effect of putting the Authority in breach of a statutory duty or any licence held by the Authority;
- 15.1.5.4 fails to comply with or breaches **Condition 21** (*Data Protection*) of the Framework Agreement;
- 15.1.5.5 fails to provide a Guarantee approved by the Authority before the Start Date in accordance with **Clause 14** (*Parent Company Guarantee*) of this Call-Off Contract or prior to the commencement of any extension in accordance with **Clause 3** (*Call-Off Contract Period*) of this Call-Off Contract;
- 15.1.5.6 commits a Persistent Breach or Persistent Breaches of any of the terms of this Call-Off Contract, and where the Persistent Breach or Persistent Breaches are capable of remedy but are not remedied by the Contractor in accordance with **Clause 28** (*Remedies for Poor Performance*) of this Call-Off Contract;
- 15.1.5.7 commits a substantial breach of any of the terms of this Call-Off Contract and the Authority's Framework Manager reasonably regards such a breach as incapable of being remedied;

- 15.1.5.8 fails to adhere to any of the KPIs for a period of three (3) months following the delivery of formal written notice to remedy the performance failure as per paragraph 4 (KPI Failure) of **Schedule 2** (Performance Monitoring/KPIs); or
- 15.15.9 commits a Termination Breach as defined in the Framework Agreement.
- 15.1.6 The Authority may terminate this Call-Off Contract in whole or in part in accordance with Clause 28.5.
- 15.1.7 The Authority may terminate this Call-Off Contract in whole or in part by notice in writing with immediate effect if the Framework Agreement is terminated for any reason whatsoever.
- 15.1.8 If for any reason the Court declares this Call-Off Contract ineffective (or where the Court sets this Call-Off Contract aside) the Authority shall pay to the Contractor the sum equal to:
  - 15.1.8.1 the reasonable costs incurred by the Contractor during the procurement (tender process) of this Call-Off Contract;
  - 15.1.8.2 the Contract Price for Services already provided under this Call-Off Contract from the Start Date to the date of such declaration of ineffectiveness;
  - 15.1.8.3 reasonable costs incurred by the Contractor in assisting the Authority to prepare its defence to the claim of ineffectiveness brought against it;
  - 15.1.8.4 the Authority reserves its right to request the Contractor to provide documentary evidence to support its claim and mitigate its losses before any payments in this Condition 15.1.8 is paid by the Authority to the Contractor.
- 15.1.9 For the avoidance of doubt Clause 15.1.8 is without prejudice to any other remedies available to each of the Parties whether under this Call-Off Contract or otherwise.
- 15.1.10 The sums paid to the Contractor by the Authority under Clause 15.1.8 above shall be in full and final settlement of the Authority's liability for any loss and/or expense incurred by the Contractor as a result of the Court declaring this Call-Off Contract ineffective.
- 15.1.11 If the declaration of ineffectiveness by the Court results in the termination of this Call-Off Contract, then the provisions of **Clause 16** (Consequences of Termination) shall apply in so far as they are compatible with the provisions of this Clause.
- 15.1.12 Reference to the declaration of ineffectiveness under this Condition shall have the meaning ascribed under the Public Contract Regulations 2015 (as amended).

## **16. CONSEQUENCES OF TERMINATION**

- 16.1 If the Call-Off Contract is terminated in accordance with **Clause 15** (*Termination*) above -:
  - 16.1.1 the Contractor shall forthwith cease to perform the Services;

- 16.1.2 the Contractor shall pay in full and promptly the cost of providing the Service or having the Service provided or any part thereof as would have been provided by the Contractor during the remainder of the Call-Off Contract Period to the extent that such cost exceeds such sums as would have been lawfully payable to the Contractor for providing the Services if the termination is due to an act, omission, default, negligence or breach of the Contractor or any of its Staff;
  - 16.1.3 the Contractor shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the Authority; and
  - 16.1.4 the cessation by the Contractor of use of the Authority's Data and the handing over to the Authority of a complete and uncorrupted version of all Authority Data and all records, information, documents whatsoever held including without limitation correspondence with Staff, the Authority's service departments, and any other relevant third party and the Authority's Equipment and the Authority's Premises and anything else relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the Authority (in which event the Authority shall reimburse to the Contractor the Authority's reasonable data conversion expenses) whether such Authority Data is on hard copy or on a disk or on any computer systems.
- 16.2 If the Contractor fails to comply with **Clause 16.1**, the Authority may recover possession thereof and the Contractor grants a licence to the Authority and its authorised representatives to enter (for the purposes of such recovery) any of the Contractor's Premises where any such items may be held.
- 16.3 The Contractor shall at the sole option of the Authority either return to the Authority in an agreed form timescale and location in Hertfordshire as specified by the Authority or destroy the Authority's Data and all copies thereof as instructed by the Authority.
- 16.4 If the Contractor is unable or fails to provide the Services or any part thereof in accordance with this Call-Off Contract, the Authority may itself provide or may employ and pay other persons to provide the Services or any part thereof and all costs incurred thereby may be deducted from any sums due to the Contractor under either the Framework Agreement of this Call-Off Contract or shall be recoverable from the Contractor by the Authority as a debt. The Authority's right under this **Clause 16.4** shall be without prejudice to any other rights or remedies which it may possess.
- 16.5 The Authority shall be entitled in respect of any loss or damage to the Authority resulting from or arising out of the termination of the Call-Off Contract, to deduct the same from any sum or sums which would but for **Clause 15 (Termination)** above have been due from the Authority to the Contractor under the Call-Off Contract or any other contract or be entitled to recover the same for the Contractor as a debt. Such loss or damage shall include the reasonable costs to the Authority of the time spent by its officers in terminating the Call-Off Contract and in making alternative arrangements for the provision of the Services or any part thereof when the total costs, loss and/or damage resulting or arising out of the termination of the Call-Off Contract have been calculated and after taking into account any deduction made or to be made by the Authority from any sum or sums which would but for **Clause 15 (Termination)** have been due to the Contractor, any balance shown as due to the Authority shall be recoverable as a debt or alternatively, the Authority, subject to the **Clause 12 (Recovery of Sums Due)** above, shall pay the Contractor any balance due to the Contractor.

- 16.6 The rights of the Authority under this **Clause 16** are in addition to and without prejudice to any other rights or remedies the Authority may have against the Contractor directly or pursuant to any guarantee and/or performance bond or indemnity.
- 16.7 Expiry or earlier termination of the Call-Off Contract shall be without prejudice to the rights and remedies of the Contractor and the Authority accrued before such termination or expiration and nothing in the Call-Off Contract shall prejudice the right of either such Party to recover any amount outstanding at the termination or expiration.
- 16.8 Expiry or earlier termination of this Call-Off Contract shall not affect the continuing rights and obligations of the Parties under the Framework Agreement.

## **17. THE AUTHORITY'S PREMISES AND THE CONTRACTOR'S STAFF**

- 17.1 If and when directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with this Call-Off Contract to any of the Authority's Premises, specifying the capacities in which they are concerned with this Call-Off Contract and giving such other particulars as the Authority may reasonably desire.
- 17.2 The Authority reserves the right under this Call-Off Contract to refuse to admit to, or to withdraw permission to remain on the Authority's Premises any Staff member whose admission or continued presence would be, in the reasonable opinion of the Authority, undesirable.
- 17.3 The Authority shall allow representation to be made by the Contractor before any Staff member is to be refused access to any of the Authority's Premises.
- 17.4 The Contractor shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Contractor by the Authority for entry to any Authority Premises and shall only permit such keys, passes and other means of access to be used in accordance with the Authority's Framework Manager's instructions and then only to the extent required for the purposes of providing the Services.
- 17.5 The Contractor shall ensure that the Authority's Framework Manager is informed as soon as reasonably practicable of the loss of any keys, passes and other means of access to or around the Authority's Premises and shall reimburse to the Authority any cost of replacement and/or any reasonable security measures implemented as a direct or indirect result of such loss.

## **18. ASSIGNMENT AND SUBCONTRACTING**

- 18.1 If the Contractor should sub-contract the provision of the Services or any part thereof to any person, that shall not relieve the Contractor from any liability or obligation under this Call-Off Contract and the Contractor shall be responsible for the acts, defaults or neglect of any Subcontractor or agents in all respects as if they were the acts, defaults or neglect of the Contractor.
- 18.2 Where the Authority has Approved the use of a Subcontractor or Subcontractors, such sub-contract(s) shall reflect the same terms of this Call-Off Contract and for the avoidance of doubt the sub-contract(s) shall not contain any terms which are incompatible and/or conflict with this Call-Off Contract.

## **19. INTELLECTUAL PROPERTY RIGHTS**

- 19.1 All Intellectual Property Rights in any Authority Data, specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs, reports or other material:

- 19.1.1 furnished to or made available to the Contractor by the Authority by way of an exclusive licence during the Call-Off Contract Period shall remain the property of the Authority;
  - 19.1.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of the Call-Off Contract shall belong to the Authority and the Contractor shall not, and shall procure that the Staff shall not, (except when necessary for the implementation of the Call-Off Contract) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Call-Off Contract) which the Contractor may obtain in performing the Call-Off Contract except information which is already legally in the public domain.
- 19.2 The Contractor shall obtain written Approval before using any material, in relation to the performance of this Call-Off Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the third party Intellectual Property Rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Authority, and shall be granted at no additional cost to the Authority.
- 19.3 The Contractor shall during and after the expiration of this Call-Off Contract, on written demand indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim relates to:
  - 19.3.1 designs furnished by the Authority;
  - 19.3.2 the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of this Call-Off Contract.
- 19.4 If in connection with the Service the Contractor or any of its Staff develop any idea which may be capable of patent or registered design protection or any like protection or registration, the Contractor shall inform the Authority forthwith in writing in order for the Authority to register the idea. If the Authority decides it wishes to make an application to register such idea and, at the request of the Authority then Contractor shall give the Authority all such assistance as it reasonably requests to obtain registration of those rights in the name of the Authority PROVIDED THAT if the Contractor incurs any reasonable out-of-pocket expenses in complying with this Clause those expenses shall be reimbursable to the Authority.
- 19.5 Pursuant to **Clause 19.4**:
  - 19.5.1 The Contractor shall keep confidential the existence of and all details of any idea which may be capable of registration under **Clause 19.4** and shall not disclose the same to any third party and/or, without the prior written consent of the Authority's Framework Manager, put the idea into use.
  - 19.5.2 The Authority shall be the sole proprietor of any idea which is the subject of **Clause 19.4** and no payments shall be due from the Authority to any third party in respect of the idea except that the Contractor shall be entitled to a share in the profits of any exploitation of any registered rights (other than in connection with the Service) which the Authority shall agree to pay to the Contractor.



- 19.5.3 The Contractor shall ensure that all of its Staff waive any rights that they may have in the nature of moral rights in relation to any work which will inhibit the free use of the work by the Authority PROVIDED THAT this **Clause 19** does not apply to those rights which are not capable of exclusion by contractual provisions or the rights specifically granted under this Call-Off Contract.
- 19.6 Nothing in this Call-Off Contract shall in any way derogate from the rights of the Authority under any Law relating to patents, copyrights, registered design rights or design rights.
- 19.7 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- 19.7.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- 19.7.2 shall take due and proper account of the interests of the Authority; and
- 19.7.3 shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 19.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this Call-Off Contract.
- 19.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Call-Off Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the Approval of the Authority's Framework Manager (not to be unreasonably withheld or delayed) either:
- 19.9.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute services; or
- 19.9.2 procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

## **20. INSURANCE**

- 20.1 Without prejudice to the general indemnity given at **Clause 24 (Indemnity)** and without thereby limiting its responsibilities under this **Clause 20** the Contractor shall insure with a reputable insurance company against any damage loss or injury which may occur to any property or to any person by or arising out of or in consequence of the Contractor's execution of its obligations under this Call-Off Contract or in carrying out of this Call-Off Contract and shall take out and maintain the following insurance policies:-

### **Public Liability Insurance**

- 20.1.1 Public liability insurance of a minimum of five million pounds (£5,000,000) or such greater sum as the Contractor may choose in respect of any one incident.

### **Employers Liability Insurance**

- 20.1.2 Employers Liability Insurance of a minimum of ten million pounds (£10,000,000) or such greater sum as the Contractor may choose in respect of any one incident.

### **Professional Indemnity Insurance**

- 20.1.3 Professional Indemnity Insurance in respect of the Contractor's obligations to provide the Services with reasonable skill care and diligence in an amount of not less than five million pounds (£5,000,000) for any one occurrence or a series of occurrences arising out of any one event for a period of twelve (12) years from the completion date of this Call-Off Contract.
- 20.2 Should the Contractor cease to be insured due to such insurance ceasing to be available to contractors of the same profession or discipline the Authority may but not unreasonably or vexatiously without prejudice to any accrued rights or remedies under this Call-Off Contract terminate this Call-Off Contract by notice in writing having immediate effect.
- 20.3 The Contractor shall supply to the Authority at the commencement of the Call-Off Contract forthwith and upon each renewal date of any relevant policy a certificate from its insurers or brokers confirming that the Contractor's insurance policies comply with **Clauses 20.1.1, 20.1.2 and 20.1.3.**

## **21 HEALTH AND SAFETY**

- 21.1 In relation to the Staff, the Contractor shall at all times comply with the requirement of the Health and Safety at Work Act 1974 and any other legislation or order pertaining to the health and safety of employees and others who may be affected by the Contractor's acts or omissions in providing the Services under this Call-Off Contract.
- 21.2 The Contractor shall comply with all health and safety requirements affecting the Contractor's Premises and when working on any Authority's Premises and the Authority's health and safety rules for contractors set out in **Appendix 3 (The Authority's Policy Statements)**, as appropriate. The Contractor shall take full responsibility for the adequacy and safety of all operations and methods adopted in the performance of the Services and the acts of its Staff. The Contractor shall notify the Authority in writing if any method or practice set out in any Method Statement within the **Schedule 5 (Tender Response Document)** shall be or shall become an unsafe method of practice.
- 21.3 The Contractor shall throughout the Call-Off Contract Period have full regard for the safety of all persons, including its Staff and shall keep any Authority's Premises it uses, the Contractor's Premises, stores, the Authority's Equipment (so far as the same shall be under its control) and the Contractor's Equipment in an orderly state appropriate to the avoidance of danger to all persons, and shall provide and maintain at its own cost adequate warning signs when and where necessary or required by the Authority or by any competent statutory or other authority for the protection or for the safety and convenience of the public or others.

- 21.4 The Authority reserves the right to suspend the provision of the Services in whole or in part without paying compensation if and whenever the Contractor is, in the reasonable opinion of the Authority, in contravention of the Health and Safety at Work Act 1974 and provisions within this **Clause 21**.

## **22. ENVIRONMENTAL REQUIREMENTS**

- 22.1 The Contractor shall when carrying out the Service and/or working on the Contractor's Premises and/or Authority's Premises perform this Call-Off Contract in accordance with the Authority's Environmental Policy, including a requirement to conserve energy, water, wood, paper and other resources to reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases volatile organic compounds and other substances damaging to health and the environment.

## **23. HUMAN RIGHTS ACT 1998**

- 23.1 In the performance of the Services the Contractor shall comply with the Human Rights Act 1998 as if it was a "Public Authority" within the meaning of the Human Rights Act 1998.

- 23.2 If a third party threatens or commences proceedings or complaint against the Authority on the grounds that there has been a breach of any person's rights under the Human Rights Act 1998 in connection with this Call-Off Contract, the Contractor shall use all reasonable endeavours to co-operate with the Authority so as to enable the Authority:

23.2.1 to achieve the aim of successfully averting or defending the proceedings or complaint; and/or

23.2.2 to comply with any order, judgment or direction made pursuant to the same by any duly authorised authority.

- 23.3 The Authority may additionally in its discretion determine such modifications to this Call-Off Contract as may be required to enable it to comply with the provisions of the Human Rights Act 1998 and the Contractor shall forthwith comply with such modifications.

## **24. INDEMNITY**

- 24.1 Neither of the Parties excludes or limits its own liability for:-

24.1.1 death or personal injury caused by its negligence, or that of its own personnel (including its employees, servants, agents, suppliers, volunteers and subcontractors);

24.1.2 fraud or fraudulent misrepresentation by it or its personnel (including its employees, servants, agents, suppliers and subcontractors); or

24.1.3 breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

- 24.2 The Contractor shall be liable for and shall fully and promptly indemnify and keep indemnified the Council, their employees and agents, against all liabilities, demands, proceedings, damages, costs, losses, claims, charges and expenses whatsoever in any way arising out of or in connection with:

24.2.1 any breach by the Contractor of any of the provisions of the Call-Off Contract;

24.2.2 the use or occupation by the Contractor of the Council's premises or of any premises for which the Council;

24.2.3 the use by the Contractor of any equipment or asset owned by the Council for which the Council has any legal responsibility;

24.2.4 any negligent, other tortious or fraudulent act or omission of, or breach of statutory duty by the Contractor.

24.3 The liability set out in **Clause 24.2** shall, for the avoidance of doubt, include liability for third parties employed in connection with the Services in so far as the management of, or instructions issued to such third parties is the responsibility of the Contractor.

## **25. FORCE MAJEURE**

25.1 No Party shall be entitled to bring a claim for a breach of obligations under this Call-Off Contract by the other Party, or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out all or a material part of its obligations under this Call-Off Contract by that Force Majeure Event.

25.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party before the expiration of twenty-four (24) hours. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

25.3 Within forty-eight (48) hours, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Call-Off Contract.

25.4 If the Force Majeure continues for more than thirty (30) Calendar Days the Authority may terminate this Call-Off Contract by giving thirty (30) Calendar Days' written notice. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Call-Off Contract occurring prior to such termination.

25.5 This **Clause 25** does not affect the Authority's rights to terminate this Call-Off Contract in accordance with **Clause 15 (Termination)** in respect of any ground for termination which does not arise from a delay in or failure of the Contractor in the performance of its obligations under this Call-Off Contract where such delay or failure has not arisen as a result of a Force Majeure Event.

## **26. INDUSTRIAL ACTION**

26.1 The Contractor shall give the maximum possible advance warning of prospective industrial action and/or industrial dispute by its Staff likely to affect the performance of this Call-Off Contract adversely.

26.2 In the event that:

26.2.1 industrial action is taken by any Staff member such as that the provision of the Services are, in the opinion of the Authority, materially disrupted; or

26.2.2 action is taken by the Contractor so as to prevent its Staff from providing the Services,

the Contractor shall make every attempt to ensure its Staff continue to provide the Services in accordance with the Call-Off Contract. The occurrence of industrial action by the Staff shall not relieve the Contractor from any of its obligations set out in this Call-Off Contract. The Authority reserves the right to make alternative arrangements for the provision of the Services and to charge the Contractor for any difference in resultant cost including the cost of a Replacement Contractor or terminate this Call-Off

Contract by notice in writing to the Contractor in accordance with **Clause 15.1.4.1**.

**27. BUSINESS CONTINUITY**

- 27.1 The Parties shall agree no later than sixty (60) Working Days after the Commencement Date a Business Continuity Plan which shall ensure that the Contractor can restore or regenerate full business activity in the event of an internal or external threat within a reasonable period of time as specified by the Authority.
- 27.2 The Business Continuity Plan shall contain but shall not be limited to timescales and methods for ensuring business continuity in respect of a major failure of the Services or any part thereof, as determined by the Authority's Framework Manager.
- 27.3 The Contractor shall review and assess the Business Continuity Plan every twelve (12) Months and produce a report to the Authority of the success or failure. If the Authority is not satisfied with the Business Continuity Plan provided by the Contractor, the Authority reserves the right to ask for the review and assessment to be repeated at the Contractor's expense.
- 27.4 Any costs incurred in the preparation and implementation of the Business Continuity Plan shall be the responsibility of the Contractor.

**28. REMEDIES FOR POOR PERFORMANCE**

- 28.1 If the Authority's Framework Manager informs the Contractor's Authorised Representative in writing that the Authority considers that any part of the Services provided do not meet the requirements of this Call-Off Contract or differ in any way from specified requirements, and this is other than as a result of default or negligence on the part of the Authority, and the breach or failure to provide any all or any part of the Service is capable of remedy, the Contractor shall, at its own expense produce a plan of corrective action specifying timescales for the plan of action to be put into place (the "Action Plan").
- 28.2 If the Contractor fails to produce the Action Plan within the time limit specified by the Authority or if there are any elements of the Action Plan that the Authority's Framework Manager disagrees with then the Authority's Framework Manager shall specify amendments to the Action Plan and the Contractor shall pay to the Authority the costs of preparation of any such amendments made by the Authority.
- 28.3 Approval of the Action Plan will be confirmed in writing by the Authority's Framework Manager to the Contractor's Authorised Representative.
- 28.4 Improvements in performance will be monitored in accordance with the Action Plan by each of the Parties.
- 28.5 If the Contractor fails to satisfy the Authority within the time limit specified by the Authority that the areas of concern raised in the Action Plan have been remedied then the Authority shall be entitled to terminate all or any part of this Call-Off Contract by notifying the Contractor in writing of the problem and giving notice to terminate from the date of the notice or in respect of the Service or any part of the Service and the provisions of **Clause 16** (*Consequences of Termination*) of this Call-Off Contract shall apply.
- 28.6 Without prejudice to any other rights and remedies the Authority may have pursuant to this Call-Off Contract the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Contractor's delay in the performance of its obligations under this Call-Off Contract and which delay the Contractor has failed to remedy following reasonable notice from the Authority.

- 28.7 If the breach by the Contractor or failure to provide all or any part of the Services is not capable of remedy, as determined by the Authority's Framework Manager, it shall be dealt with in accordance with **Clause 15** (*Termination*).

## **29. EXIT AND HANDOVER ARRANGEMENTS**

- 29.1 The Contractor shall not charge the Authority or any Replacement Contractor for any expenditure incurred howsoever in carrying out the handover arrangements as set out in this **Clause 29** on expiry or earlier termination.
- 29.2 The plan for the orderly handover of the Services to the Authority or its Replacement Contractors following termination or expiry of this Call-Off Contract shall include compliance by the Contractor of the provisions specified in **Clause 16** (*Consequences of Termination*).
- 29.3 The Contractor shall forthwith upon the request of the Authority's Framework Manager, supply to the Authority any information reasonably specified by the Authority as being necessary for the re-tendering of this Call-Off Contract.
- 29.4 On giving written notice to the Contractor and after twelve (12) months of the date of the expiry or earlier termination of this Call-Off Contract unless the individual is responding to a job advert the Authority shall have the right:
- 29.4.1 to offer any of the Staff who has previously been involved in performing the Services employment or a contract for services with the Authority and the Contractor agrees that if such person accepts such offer the Contractor shall release such person from any contractual restriction with it which such acceptance may otherwise contravene;
  - 29.4.2 to require the Contractor to provide for a period of four (4) Months following the date of expiry or termination such advice assistance and co-operation as the Authority may reasonably require to enable the Authority to provide the Services in-house or to procure their provision by a Replacement Contractor.

## **30. LEGAL PROCEEDINGS**

- 30.1 If requested to do so by the Authority's Framework Manager the Contractor shall provide to the Authority within the timescale set by the Authority's Framework Manager any relevant information (including but not limited to documents and statements from the Contractor and/or its Staff) in connection with any legal inquiry dispute resolution or Court proceedings in which the Authority may become involved or any relevant Authority internal disciplinary hearing arising out of the provision of the Services or the Contractor's presence on any of the Authority's Premises and shall give evidence in such inquiries arbitration or proceedings or hearings.
- 30.2 Where the Contractor or any of its Staff become aware of any incident accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services it shall notify the Authority's Framework Manager immediately in writing. Such notification shall include all relevant information to enable the Authority's Framework Manager to investigate the matter fully.
- 30.3 If requested to do so by one Party to the other Party, the other Party shall provide, at no cost to the recipient, any relevant information in connection with any legal enquiry, relevant disciplinary hearing, dispute resolution or Court proceedings in which it may become involved arising out of the provision of the Services under this Call-Off Contract.

- 30.4 The Contractor shall indemnify and keep indemnified the Authority against all and any liabilities incurred by reason of the Contractor's failure to meet any timescale specified in Law and/or any reasonable timescale specified by the Authority in connection with this **Clause 30**.

**31. CONFLICT OF INTEREST**

- 31.1 The Contractor shall take appropriate steps to ensure that neither it nor any of its Staff are placed in a position where there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Authority under the provisions of this Call-Off Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise and take all reasonable steps to remove any such conflict to the satisfaction of the Authority's Framework Manager.

**32. USE OF THE AUTHORITY'S CREST OR LOGO**

- 32.1 The Contractor shall not use the Authority's crest either on its own or in combination with the Contractor's crest or logo nor cause or permit it to be used.

**33. LIEN OR ENCUMBRANCE**

- 33.1 The Contractor will not create, or allow any other person to create, any lien or encumbrance on any property belonging to the Authority, the Authority's Equipment and/or on the Authority's Premises.

**34. USE OR OCCUPATION OF AUTHORITY'S PREMISES**

- 34.1 Any Authority's Premises made available to the Contractor by the Authority in connection with this Call-Off Contract shall be made available to the Contractor and shall be used by the Contractor solely for the purpose of performing its obligations under this Call-Off Contract.

- 34.2 In accordance with this Call-Off Contract, **Schedule 1 (Specification)** and **Schedule 5 (Tender Response Document)** of the Framework Agreement (where agreed by the Authority and subject to the exclusion of the security of tenure provisions of the Landlord and Tenant Act 1954 (as amended) and the necessary declaration by the Contractor as tenant to that effect where applicable) the Contractor shall have the use of the Authority's Premises subject to the Contractor entering into a property related document prepared by the Authority:

34.2.1 Where the Authority owns the freehold, the Contractor shall have use of the Authority's Premises as lessee and shall vacate the same on completion, termination or abandonment of this Call-Off Contract;

34.2.2 Where the Authority has a leasehold interest, the Contractor shall have use of such land or Premises as under-lessee (notwithstanding that prior agreement shall be sought by the Authority from the landlord of the freehold estate for any such grant of a lease) and shall vacate the same on completion, termination or abandonment of this Call-Off Contract;

34.2.3 Where the Authority has user rights, the Contractor shall have use of such Authority's Premises as the nominated agent of the Authority and will have the same user rights as the Authority, and shall vacate the same on completion, termination or abandonment of this Call-Off Contract.

- 34.3 The Contractor shall not use Authority's Premises for any purpose or activity other than the provision of the Services unless otherwise agreed in writing.

- 34.4 Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. Ownership of such modifications shall rest with the Authority.
- 34.5 The Contractor shall ensure that it's Staff observe and comply with such rules and regulations as may be determined at any time by the Authority for the use of the Authority's Premises.
- 34.6 The Contractor shall pay for the cost of making good any damage caused by the Contractor and it's Staff other than fair wear and tear. For the avoidance of doubt damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 34.7 The Parties agree that (unless expressly agreed to the contrary) there is no intention on the part of the Authority to create a tenancy of whatsoever nature in favour of the Contractor or its Staff and that no such tenancy has or shall come into being.
- 34.8 Notwithstanding any rights granted pursuant to this Call-Off Contract, the Authority retains the right at any time to use in any manner the Authority sees fit any Authority's Premises.
- 34.9 Access to the Authority's Premises shall not be exclusive to the Contractor but shall be limited to such Staff as are necessary to perform of the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others on the Authority's Premises as the Authority may reasonably require.
- 34.10 The Contractor shall vacate the Participating Body' Premises on the Expiry Date, earlier termination or abandonment of this Call-Off Contract.

**35. CONTRACTOR'S EQUIPMENT AND AUTHORITY'S EQUIPMENT**

- 35.1 The Contractor shall be responsible for the provision and maintenance of the Contractor's Equipment during the Call-Off Contract Period.
- 35.2 The Contractor shall be responsible for the security of the Contractor's Equipment and the Authority shall be under no liability in respect thereof including where the Contractor's Equipment is used and/or stored on Authority's Premises save where any damage or loss is caused to the Contractor's Equipment by the acts or omissions of the Authority.
- 35.3 The Contractor shall ensure that any hired or leased equipment is clearly marked with the name of the hirer or owner.
- 35.4 The Contractor shall upon request made by the Authority's Framework Manager at any time in relation to any item of Contractor's Equipment used in the provision of the Service, forthwith notify Authority's Framework Manager in writing the name and address of the owner thereof.
- 35.5 Where in the opinion of the Authority, any Contractor's Equipment used in the performance of the Service does not comply with the requirements of this Call-Off Contract, the Authority may serve on the Contractor a notice in writing requiring the Contractor to remove such Contractor's Equipment within such time as may be specified in the notice and to substitute proper and suitable Equipment.
- 35.6 The Authority reserves the right to reject any Contractor's Equipment which, in the opinion of the Authority, will not achieve the standard of the Services or is unsafe.



- 35.7 The Contractor shall maintain in a safe, serviceable and clean condition, all Contractor's Equipment used in the provision of Service on the Contractor's Premises and/or Authority's Premises and on request shall allow the same to be inspected by the Authority's Framework Manager.
- 35.8 The Contractor shall keep all hazardous Contractor's Equipment and any Authority's Equipment provided for use by the Contractor under proper control and safekeeping and shall ensure that all Contractor's Equipment and Authority's Equipment is properly and clearly labelled.
- 35.9 Where adequate secure storage space is not provided by the Authority at the Authority's Premises, the Contractor shall provide at its own expense, reasonable and suitable storage for all Contractor's Equipment and Authority's Equipment. Such storage may be provided on the Authority's Premises only with the consent of the Authority, and in accordance with any restrictions or requirements he may impose. If secure storage facilities are not available on the Contractor's Premises or Authority's Premises (as appropriate), the Contractor shall ensure that all Contractor's Equipment and Authority's Equipment are removed from the Contractor's Premises or Authority's Premises (as appropriate) as soon as work there ceases.
- 35.10 The Contractor must return all the Authority's Equipment to the Authority on expiry or earlier termination of the Call-Off Contract.

## **36. COMPLAINTS**

- 36.1 The Contractor shall ensure that it has a complaints procedure in place from the Commencement Date in respect of complaints about the Services, which shall be approved by the Authority from time to time.
- 36.2 The Contractor shall ensure that the information specified below is included in its complaints procedure:
- 36.2.1 that the Service being provided is being provided on behalf of the Authority;
- 36.2.2 that in the event any member of the general public is dissatisfied with the manner in which or the standard to which the Service is being provided, they may (but only after exhausting the Contractor's complaints procedure) make a formal complaint to the Authority's Framework Manager; and
- 36.2.3 the address and telephone number of the Authority's Framework Manager.
- 36.3 The Contractor shall notify the Authority's Framework Manager within two (2) Working Days if it receives any complaints in relation to the Services with details of how the Contractor proposes to resolve the complaint. If the complaint is not resolved to the satisfaction of the Authority's Framework Manager within the time specified by the Authority's Framework Manager, the Authority's Framework Manager may take action in accordance with **Clause 28 (Remedies for Poor Performance)**.

## **37. DISPUTE RESOLUTION**

- 37.1 The Parties shall use reasonable efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to this Call-Off Contract or breach of it.
- 37.2 If any dispute with respect to this Call-Off Contract cannot be settled amicably through ordinary negotiations by appropriate representatives of the Authority and the Contractor under **Clause 37.1**, the dispute shall be referred to the Authority's Framework Manager and the Contractor's Authorised Representative who shall meet in order to attempt to resolve the dispute. (Where either the Contractor's Authorised Representative or the Authority's Framework Manager has been involved in the negotiations referred to in **Clause 37.1** above, the Contractor's Authorised Representative and the Authority's Head of Service

or equivalent shall designate a further representative to deal with the dispute).

- 37.3 If any meeting held in accordance with **Clause 37.2** above fails to result in a settlement, the dispute shall be referred by the Parties to mediation or the Centre for Dispute Resolution unless the Council considers that the dispute is not suitable for mediation/Alternative Dispute Resolution ("ADR") proceedings.
- 37.4 In the event of referral of the dispute in accordance with **Clause 37.3**, each of the Parties shall bear its own costs incurred in the mediation / ADR proceedings and one half of the fees and expenses of the mediator / ADR body unless a different agreement is reached as part of any settlement arrived at as a result of the relevant mediation / ADR proceedings.
- 37.5 For the avoidance of doubt the provisions of this **Clause 37** shall not be construed as ousting the jurisdiction of the Court.

**38. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006**

- 38.1 For the purpose of the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) ("the 2006 Regulations"), the Contractor shall, if so requested in writing by the Authority at any time during the last twelve (12) months of the term of the Call-Off Contract, immediately provide to the Authority the following:
- 38.1.1 the numbers of staff employed by the Contractor and any sub-contractor;
  - 38.1.2 the terms of employment of those staff; and
  - 38.1.3 any other information relating to the employment of those staff as may be required by the Authority for the purposes of the application of the 2006 Regulations.
- 38.2 The Contractor shall indemnify the Authority for all claims, proceedings and costs in respect of all actions brought against that the Authority by any of its employees at the end of the Call-Off Contract in the event that the 2006 Regulations do apply at the end of the Call-Off Contract to transfer the employees to any new contractor of the Services.
- 38.3 Upon providing information under this Clause 38, the Contractor is deemed to give an undertaking that it will not vary any terms and conditions of employment so provided to the Authority (including rates of pay) after the date of providing the same without the prior written approval of the Authority and shall indemnify the Authority in relation to any costs, losses, expenses or other detriment incurred by the Authority in consequence of the Contractor having varied such terms and conditions after providing details to the Authority.

**[SPECIAL TERMS]**

IN **WITNESS** whereof this Call-Off Contract has been executed by the parties hereto the day and year first above written.

**The Authority**

Signature: ..... Signature: .....

Name:..... Name:.....

Position: ..... Position: .....

**The Contractor**

Signature: ..... Signature: .....

Name:..... Name:.....

Position: ..... Position: .....

**IN WITNESS** whereof the parties have Executed this Agreement the day and year first before written:

**THE COMMON SEAL OF  
HERTFORDSHIRE COUNTY COUNCIL**  
was hereunto affixed in the presence of:

.....  
Chief Legal Officer

**EXECUTED AS A DEED by**  
**[please insert name of Contractor]**  
acting by:

.....  
Director

.....  
Director / Company Secretary\*  
[\*Delete as appropriate]

*or*

**EXECUTED AS A DEED by**  
**[please insert name of Contractor]**  
acting by:

.....  
Director

in the presence of -:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

*or*

**THE COMMON SEAL OF**  
***[please insert name of Contractor]***  
was hereunto affixed in the presence of:

.....  
Authorised Signatory

**APPENDIX 1  
CHANGE CONTROL NOTICE**

This Change Control Notice is to be completed whenever there is a variation, addition or deletion from the Call-Off Contract. The Provisions of **Schedule 3** of the Framework Agreement shall apply to any variation within the Framework Agreement. This document is to be signed by an authorised representative of the Contractor and the Authority.

Sequential Number: .....

Title: .....

Number of pages attached: .....

**WHEREAS** the Contractor and the Authority now wish to amend the Call-Off Contract

**IT IS AGREED** as follows:

- (a) With effect from ..... the Call-Off Contract shall be amended as set out in this Change Control Notice
- (b) Save as herein amended all other terms and conditions of the Call-Off Contract shall remain in full force and effect.

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Changes to Call-Off Contract:

---

Signed for and on behalf of the **Contractor**:

By ..... Name .....

Title ..... Date .....

Signed for and on behalf of the **Authority**:

By ..... Name .....

Title ..... Date .....

**APPENDIX 2**  
**[Please replace with the appropriate policies]**  
**THE AUTHORITY'S POLICY STATEMENTS**

**THE AUTHORITY'S EQUAL OPPORTUNITIES POLICY STATEMENT**

The Authority believes in openness and equality in our dealings with each other and in the way we provide services to members of the community. Every individual is entitled to dignity and respect. Care for the users of our services goes hand in hand with care for our employees. The Authority aims to ensure that all groups and individuals within the community are given full opportunity to benefit from the services and job opportunities it provides. No Service User or potential Service User, employee or potential employee will be discriminated against because of trade union activities or any protected characteristic listed in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

More information is available in the Authority's Equal Opportunities Policy which can be found on the Authority's Doing Business with the Authority section at:

<https://www.hertfordshire.gov.uk/services/business/doing-business-with-us.aspx>

**TRANSLATION AND INTERPRETING**

The Authority is committed to providing equitable, effective and proportionate access to its services to all who need it regardless of their ability to communicate due to lack of or limited proficiency in English and/or hearing related sensory difficulties.

The Authority expects and requires that the Contractors will ensure equal access to the services they provide on behalf of the Authority by way of ensuring that interpreters and translators are made available when needed.

**THE AUTHORITY'S WHISTLEBLOWING PROCEDURE**

The Authority's Whistleblowing Procedure is contained in Annex 17 to the Constitution Code of Conduct for Officers, a copy of which will be provided to the Contractor on request. The Contractor will need to develop a Whistleblowing Policy, in line with the Authority's Whistleblowing Procedure, and review this on an annual basis and make the policy available to the Contract Manager. The Authority's Whistleblowing Procedure is available on the Authority's Doing Business with the Authority section at: <http://www.hertfordshire.gov.uk>

**THE AUTHORITY'S HEALTH AND SAFETY RULES FOR CONTRACTORS**

These are general safety rules which should be brought to the attention of all Contractors and its Staff working on Authority Premises.

**AUTHORITY PREMISES SECURITY**

1. All reasonable steps must be taken to report your presence on Authority Premises before commencing work.

- a. On arrival, you must report to Reception and you must enter and leave through front Reception only, unless otherwise agreed.
  - b. The badge issued to you must be worn at all times conspicuously. It must be returned to Reception when you leave the Authority Premises.
  - c. Parking arrangements will be agreed and authorised by the Contract Manager.
  - d. Ensure your possessions and materials are protected, secured and not left unattended.
  - e. You are strictly forbidden from entering any other departments or areas in which you are not working.
  - f. Fire Procedures, Emergency Procedures – the Contract Manager or their representative will ensure the contractor is made aware of emergency plan / evacuation procedures – emergency actions are also provided via notices around the Authority Premises.
  - g. Vehicles and baggage may be liable to search on exit from the Authority Premises.
2. The Contractor and its Staff will conform in all respects to your legal duties and responsibilities as laid down by Health and Safety Law, and some specific expectations and requirements are listed below.
3. The Authority will retain the right to stop any action of any of the Contractor or its Staff if it is considered that there is an imminent risk to the safety and health of employees or of others. The Authority will not accept any responsibility for any increased costs arising out of such action. In the event of the Authority taking this action the Contractor's Authorised Representative will be notified verbally and will have confirmation in writing from the Authority's representative supervising the contract ordering such a stoppage.
4. **NO SMOKING**  
  
Smoking is not allowed in any building, or in the vicinity of any storage area, except In designated smoking areas.
5. **EQUIPMENT**  
  
All tools and Contractor's Equipment brought onto the Authority Premises **MUST** comply with acceptable standards of safety. Portable electrical equipment must be battery operated, 110v or supplied via a Residual Current Circuit Breaker. Staff of the Authority have the right of examination and to reject equipment considered to be unsatisfactory. The Authority's Equipment may not be used.
6. **DISTURBANCE**  
  
All works shall be carried out so as to cause the minimum of interference and disturbance to the occupiers of the Authority Premises and the public. Detailed

site limitations to be provided prior to the commencement of works. The area around the works shall be adequately segregated from other users of the Authority Premises. Noisy and dirty operations are only permitted within times agreed with the Local Manager. Waste, dust and other debris caused by the building operations or other work shall be cleared regularly as work progresses, and at the end of each Working Day.

7. **VEHICLES**

Vehicles are not allowed on Authority Premises without the permission of the Contract Manager. The Authority Premises speed limit and other warning notices must be observed and adhered to at all times.

8. **EMERGENCIES**

If the fire alarms sound, you must stop work immediately, and report to the designated Evacuation Assembly Point. Contractors shall ensure that all routes and means of escape in case of fire or emergency to the premises are kept clear at all times.

9. **ACCIDENTS/INCIDENTS, DANGEROUS OCCURRENCES AND NEAR MISSES**

All injuries or incidents involving damage to plant, buildings or equipment must be reported immediately to the Contract Manager. The Authority retains the right to stop any operation or action of any Contractor, if it is considered that there is a danger to the safety & health of Authority employees or other Authority Premises users. Any costs caused by this stoppage will be borne by the Contractor.

10. **CATERING**

No catering is provided on Authority Premises. No intoxicating liquor may be bought on or consumed on Authority Premises.

11. **RISK ASSESSMENTS**

Any activity which may put the health and safety of Staff or others not in their employ at risk must be communicated to the Contract Manager, Authority Premises manager or Health and Safety Co-ordinator. Risk assessments and method statements must be made immediately available. Copies of risk assessments and relevant method statements should be provided prior to the activity commencing. All risk assessments and method statements shall be specific to the site and all aspects of activity undertaken.

12. **PERMIT TO WORK**

The Authority operates permit to work processes to authorise a contractor to work on Authority Premises. These enable exchange of key information between the Authority Premises manager and the Contractor about the work, its location and how it will be carried out. The Contractor must provide details of the work they will be undertaking and any risks this may pose to other Authority Premises users



and how they intend to control the hazards. High-risk permits to work are required for activities where there is considered to be a greater risk to life and limb. These include work requiring electrical or mechanical isolation, hot work, entry into designated confined space conditions, work with asbestos and work at height e.g. roof work.

13. **PROTECTIVE CLOTHING**

The Contractor shall ensure that appropriate personal protective clothing (PPE) is provided and worn by Staff when required.

14. **EQUALITIES ACT 2010 (EA 2010)**

All works carried out on behalf of the Authority must be EA 2010 compliant.

**DATA PROTECTION AND THE HANDLING OF PERSONAL DATA**

15. The Contractor, its Staff, representatives and agents, shall comply with the requirements of Data Protection Legislation in relation to the provision of the services and shall not knowingly or negligently place the Authority in breach, or potential breach, of such legislation
16. In accordance with the Data Protection Act (DPA) 2018 and The Data Protection (Charges and Information) Regulations 2018, the Contractor shall ensure that they have notified the Information Commissioner's Office of their personal data processing activities. The Contractor shall advise the Authority of its notification reference on the Public Register of Data Controllers.
17. The Contractor shall only use information that is given or made available to it by the Authority in line with the requirements of the Data Protection Legislation for the provision of the services, in accordance with specific instructions, and for no other purpose whatsoever at any time.
18. The Contractor shall ensure that personal information is not disclosed to any other party unless it has first consulted the Authority regarding the legality and mechanism of the disclosure and the Authority is satisfied that there is a legal or regulatory obligation to disclose the data, and that the disclosure mechanism is appropriate.
19. On termination of this Contract the Contractor shall return all personal data or destroy or dispose of it in a secure manner and in accordance with any specific written instructions issued by the Authority.
20. The Contractor shall give all reasonable assistance to the Authority necessary to enable the Authority to comply with its obligations under the Data Protection Legislation
21. The Contractor shall comply with the Authority's security requirements and instructions, and shall have appropriate technical and organisation safeguards in place to meet the obligations imposed on the Authority by the Data Protection Legislation specifically as set out in Article 5 (f) of the GDPR.

22. The Contractor shall have, or shall implement prior to receiving Authority data, security procedures which satisfy the Authority that relevant standards are adhered to ensure the Contractor's and the Authority's compliance with Data Protection Legislation requirements.
23. The Authority shall be entitled to establish its own processes for evaluating and monitoring the effectiveness of the Contractor's data protection procedures and systems and shall be entitled to deduct the reasonable cost of maintaining such systems from sums due to the Contractor. The Contractor shall, upon reasonable notice, allow officers of the Authority to have reasonable rights of access to the Contractor's premises, Staff and records for the purposes of monitoring the Contractor's compliance with its security requirements, including its obligations under the Data Protection Legislation. .
24. The Contractor shall take reasonable steps to ensure the reliability of its Staff that have access to the Authority's data, and shall ensure that its Staff receive training in data protection to ensure compliance. The Contractor shall ensure that it, its Staff, representatives, agents and visitors will not access, read, listen to or in any way use Authority Data unless necessary in connection with the provision of the services.
25. The Contractor shall ensure that Personal Data, as defined under the Data Protection Legislation, is not transferred to a country or territory outside the European Union and that no other data is transferred to a country or territory outside the European Union without the prior approval of the Authority.
26. The Contractor agrees to indemnify the Authority against all costs that the Authority incurs as a result of the Contractor's failure to comply with the requirements of the Data Protection Legislation, except to the extent that the Authority has, by its or its employees' actions or default, been the cause of such failure.
27. The Contractor shall immediately inform the Authority of any breach or potential breach of these terms.
28. In the event that the Contractor fails to comply with these terms, the Authority reserves the right to terminate this Contract, in whole or in part, in writing with immediate effect.

### **SECURITY POLICY**

Hertfordshire County Authority (HCC) maintains an Information and Communications Technology (ICT) Security Policy in line with industry Standards and Good Practices.

The Security Policy applies principles of Confidentiality, Integrity and Availability to all information assets to the required legal (Data Protection Legislation) and regulatory standards (as identified by the ICO's office) in the context of business demands.

The Security Team employs a framework of policy documents and controls to enforce the policy. It also provides a fully monitored security service that is regularly reported on and measured against industry standards and best practices.

### **FLUENCY DUTY**

The Contractor shall:

1. comply with the requirements of Part 7 of the Immigration Act 2016 ("IA") as if it were a "Public Authority" within the meaning of the IA and where necessary, comply with any modifications to this Contract to enable the Parties to comply with such obligations;
2. give all reasonable assistance to the Authority necessary to enable the Authority to comply with its obligations under the IA;
3. comply with all reasonable directions given by the Authority which the Authority deems necessary to comply with its obligations under the IA; and
4. not do or omit to do any act that that would put or would be likely to put the Authority in breach of the IA,

in each case at all times, at the Consultant's sole expense, and in connection with the provision of the Services.

### **PREVENT DUTY**

The Contractor shall:

1. comply with the requirements of Section 26 of the Counter Terrorism Act 2015 ("CTA") as if it were a "Public Authority" within the meaning of the CTA and where necessary, comply with any modifications to this Contract to enable the Parties to comply with such obligations;
2. give all reasonable assistance to the Authority necessary to enable the Authority to comply with its obligations under the CTA;
3. comply with all reasonable directions given by the Authority which the Authority deems necessary to comply with its obligations under the CTA; and
4. not do or omit to do any act that that would put or would be likely to put the Authority in breach of the CTA,

in each case at all times, at the Consultant's sole expense, and in connection with the provision of the Services.

**APPENDIX 3  
EXAMPLE PARENT COMPANY GUARANTEE**

Dated                      day of                      2009

[                      ]

- and –

**[insert authority name]**

**PARENT COMPANY GUARANTEE**

THIS DEED is made the                      day of                      20[   ]

**BETWEEN:**

- (1)            [   ] ("the Guarantor") of [   ] (registration number [   ]).
- (2)            **[insert authority name]** ("the Authority") of County Hall, Hertford SG13 8DE

**WHEREAS:**

- (A)    The Authority and [   ] ("the Contractor") have entered into the Call-Off Contract for [   ] dated [   ] 20[   ], such agreement as amended from time to time is hereinafter referred to as the "Agreement"
- (B)    It was a term of the said Deed of Call-Off Contract that a Parent Company Guarantee should be procured in respect of the Services
- (C)    The Contractor is a subsidiary company of the Guarantor
- (D)    The Guarantor has agreed to guarantee the due performance of the Contractor's obligations under the agreement and any document entered into pursuant thereto.

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

IN CONSIDERATION of the sum of ONE POUND (1.00) (receipt whereby is hereby acknowledged by the Guarantor):

- (1)    The Guarantor hereby covenants as a primary obligation with the Authority that the Contractor shall at all times duly perform and observe all the obligations on its part contained in the Agreement or any document entered into pursuant to the Agreement ("the guaranteed obligations")
- (2)    The Guarantor hereby unconditionally and irrevocably guarantees to the Authority that if any sums are due and payable to the Authority by the Contractor pursuant to the terms of the Agreement and there is any default in any payment of such sum the Guarantor shall forthwith on first demand by the Authority unconditionally pay to the Authority in full the monies which are due and payable to it and unpaid by the Contractor

together with all reasonable costs and expenses which the Authority may incur in enforcing this Guarantee

- (3) The Guarantor hereby unconditionally and irrevocably undertakes to compensate the Authority for and against all damages, costs, claims, losses, demands, liabilities and expenses which may be suffered or incurred by the Authority by reason of any default on the part of the Contractor in performing and observing the terms and conditions of the Agreement to the extent such default relates to the Services provided under the Agreement and which are payable by the Contractor pursuant to the terms of the Agreement.
- (4) The Guarantor has agreed to guarantee the due performance of the Contractor's guaranteed obligations under the Agreement and any document entered into pursuant thereto.
- (5) The Authority shall first demand payment from the Contractor before enforcing the terms of this guarantee and after the expiry of 21 days from such demand the Guarantor shall then be treated in all respects as being jointly and severally liable with the Contractor for all liabilities, obligations and undertakings of the Contractor as provided in the Agreement. The Guarantor shall not be discharged or released from this guarantee nor shall its liability under this guarantee be affected or impaired by any agreement, conduct or forbearance between or afforded to the Contractor by the Authority or by any alterations in the obligations imposed on the Contractor by the Agreement or by any variations agreed to the Agreement whether or not such matters are with or without the Consent of the Guarantor.
- (6) If any monies shall become payable under or in respect of this guarantee the Guarantor shall not, so long as any monies due and payable by the Contractor to the Authority under the terms of the Agreement remain unpaid:
  - (a) In respect of the amounts paid by the Guarantor under this guarantee seek to enforce repayment by subrogation or otherwise;
  - (b) In the event of the insolvency, winding up, liquidation or dissolution of the Contractor prove in competition with the Authority in respect of any monies owing to the Guarantor by the Contractor on any account whatsoever but will give to the Authority the benefit of any such proof and of all monies to be so received in respect thereof.
- (7) All demands made by the Authority under this guarantee shall be sent to the Company Secretary of the Guarantor at the address set out above or such other address as may be notified by the Guarantor to the Authority. Such demand shall be deemed to have been made and received by the Guarantor:
  - (a) if delivered by hand, at the time of delivery;
  - (b) if sent by first class mail on the next business day after the date of posting;
  - (c) if sent by fax, at the time of transmission; and

For the purpose of this clause, "business day" means any day other than a Saturday, Sunday or a day which is a public holiday in place both of dispatch and address of the notice.

- (8) No failure to exercise and no delay in exercising on the part of the Authority any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any right, power or privilege. The rights and remedies provided herein are cumulative and not exclusive of any right or remedies provided by law.
- (9) The Guarantor hereby warrants to the Authority that it has full power and authority to enter into and perform its obligations under this guarantee and is not subject to any agreement or impediment which would prevent it entering into this guarantee or reduce

the effectiveness of this guarantee to the Authority.

- (10) This guarantee shall be binding upon the Guarantor's successors in title.
- (11) This guarantee shall remain in full force and effect notwithstanding any change in the constitution of the Guarantor, the Contractor or the Authority.
- (12) This guarantee shall be governed by and construed in all respects in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising in relation to this guarantee.

DATED this      day of      20[ ]

IN WITNESS whereof the Guarantor and the Authority have executed this guarantee as a deed on the date set out above

Executed as a deed by:

**[Contractor Name]**

Director Signature .....

Print Name .....

Director Signature .....

Print Name .....

The Common Seal of **(Authority)**  
was affixed to this Deed in the presence of:

Chief Legal Officer