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DATE

October 2009
Version 4

Chartered Institution of Wastes Management

Standard Form of Waste Management Agreement

Conditions of Contract

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PARTIES

1. [Insert name of Authority] of [insert address] (the **Authority**); and
2. [insert name of the Provider] [insert company registered number] of [insert address] (the **Provider**)

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

BACKGROUND

- (A) The Authority is the [waste collection authority] [and] [waste disposal authority] for [insert locality] for the purposes of the Environmental Protection Act 1990.
- (B) The Authority has procured a contract for the provision of the Services and the Provider has sufficient knowledge and understanding of the Services and is willing and able to perform all the Services in accordance with the terms and conditions of this Agreement.

1. PRELIMINARY

1.1 Definitions and Interpretation

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

1.2 Commencement and Duration

- 1.2.1 The Agreement shall commence on the Commencement Date and unless terminated at an earlier date in accordance with the provisions herein, will continue in force during the Initial Term and for the period of any extension to the Initial Term made in accordance with clause 1.2.2.¹
- 1.2.2 The Authority shall have the option to extend the Initial Term for a period of [X] [months/years] by giving written notice to such effect to the Provider no later than [6] months prior to the expiry of the Initial Term.²

1.3 Bonds and Guarantees³

- 1.3.1 On or prior to the Commencement Date the Provider shall if requested by the Authority provide:

¹ Where the Authority wishes to extend the Initial Term, notice of the extension must have been advertised in the OJEU Contract Notice. The main purpose for extensions is to cover any downtime between the end of the Agreement and re-tendering for a New Agreement. Consequently the term of extension period should reflect this holding period and should not amount to the award of a 'new contract'.

² The parties may also agree to extend the term by mutual consent.

³ The requirement for the Provider to supply a performance bond needs to be assessed by the Authority on a project specific basis having regard to the financial standing and corporate structure of the Provider. The bank that provides the bond will wish to approve the form of bond entered into, in particular to ensure that there is an agreed expiry date and that its liability is limited to a fixed sum. The Authority may also want to consider seeking a parent company guarantee, although this is less reliable than a performance bond. Authorities should take legal advice on what is the most appropriate form of security for each contract they enter into.

- (a) a Bond with a reputable surety within the European Union in the sum of [10]% of the annual Contract Price such Bond to be in place for the Term; or
- (b) at the discretion of the Authority, the Parent Company Guarantee from its parent company (as defined in Part 38, section 1173 of the Companies Act 2006).

2. THE SERVICE

2.1 Provision of the Service

2.1.1 The Provider agrees in consideration of the payment of the Contract Price to provide the Services with all reasonable skill prudence and foresight and in accordance with:

- (a) the terms of the Agreement (including without limitation the Specification and the Performance Standards);
- (b) the requirements of all Necessary Consents;
- (c) all applicable Laws; and
- (d) any reasonable instructions of the Authorised Officer acting in good faith.

2.1.2 *[Conditions relating to each element of the Service to be inserted here].⁴*

3. VARIATIONS TO THE SERVICE

3.1 Authority Variations

3.1.1 Subject to clause 3.1.2 the Authority shall be entitled to propose a Variation in accordance with the procedures set out in Schedule 11 (Variation Procedure).

3.1.2 The Authority shall not propose a Variation which:

- (a) infringes any Law; or
- (b) would require the Provider to apply for an unobtainable amendment to a Necessary Consent, or an unobtainable new Necessary Consent; or
- (c) would materially and adversely affect the Provider's ability to deliver the Services.

⁴ The types of conditions for a collection and recycling contract will include: the obligation to collect, receive and deliver waste to nominated delivery points, the obligation not to contaminate recyclables, a requirement to achieve certain recycling/composting/re-use rates and provisions covering risk, title and liability for waste. For contracts relating to operation of household waste recycling centres, transfer stations and/or treatment/final disposal sites, conditions also need to be inserted to deal with transfers of waste management licences, weighing obligations, use of alternative sites and maximum and minimum tonnages (where relevant).

3.2 **Provider Variations**

- 3.2.1 Where the Provider wishes to introduce a Variation, it must comply with the procedures set out in Schedule 11 (Variation Procedure).
- 3.2.2 Unless the Authority's acceptance specifically agrees to an increase in the Contract Price, there shall be no increase in the Contract Price as a result of a Variation proposed by the Provider.
- 3.2.3 The Authority shall not reject a Variation proposed by the Provider, which is required in order to conform to a Change in Law.

3.3 **Valuation and Payment**

- 3.3.1 If a Variation proposed by the Provider causes or will cause the Provider's costs or those of a Sub-Contractor to decrease the Authority and the Provider shall share in the savings and there shall be an adjustment to the Contract Price to take account of the Authority's share of the savings.
- 3.3.2 The value of the Estimate submitted by the Provider in accordance with Schedule 11 (Variation Procedure) shall be calculated in accordance with either:
 - (a) Schedule 2 (Pricing Schedule) where the Variation is of a similar character to the Services currently being performed; or
 - (b) at fair rates and prices where the Variation is not of a similar character to the Services currently being performed,so that the Provider is in no worse or better position.
- 3.3.3 Payment of the value of any Variation shall be made through a pro-rata adjustment to the Contract Price over the remainder of the Term.

3.4 **Amendments to Documentation**

- 3.4.1 The parties shall as soon as reasonably practicable after the agreement of any Variation execute such documents as may be necessary to amend the provisions of the Agreement accordingly.

4. **FORCE MAJEURE**

- 4.1.1 If either party is delayed or hindered in or prevented from performing any of its obligations under the Agreement by a Force Majeure Event then, so long as that Force Majeure Event continues, that party shall be excused from performance of such obligation to the extent that party is so delayed, hindered or prevented.
- 4.1.2 On the occurrence of a Force Majeure Event, the affected party shall notify the other party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected party and any action proposed to mitigate its effect.
- 4.1.3 As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree

appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Agreement.

- 4.1.4 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under the Agreement. Following such notification the Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 4.1.5 Neither party shall be deemed to be in breach of the Agreement, or otherwise be liable to the other, by reason of any delay or failure in performance of any of its obligations under the Agreement, to the extent that the delay or failure is caused by a Force Majeure Event relating to it and time for performance shall be extended accordingly.
- 4.1.6 For so long as the Provider's obligations are suspended as a result of a Force Majeure Event:
- (a) the Authority's corresponding payment obligation shall be reduced to reflect any actual savings in cost made by the Provider as a consequence of non-performance or any reduced performance of the Service by the Provider; and
 - (b) the Authority shall be entitled to make alternative arrangements for the provision of the Service.

5. ADMINISTRATION

5.1 Officers

- 5.1.1 The Authorised Officer shall liaise with and give instructions to the Provider and its Representatives in relation to all matters concerning the performance by the Provider of its obligations under the Agreement and to determine any matters or issue any notices as may be the function of the Authorised Officer under the Agreement.
- 5.1.2 From time to time the Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods. When such an appointment is made, the Authorised Officer shall give notice in writing to the Provider.
- 5.1.3 The Provider's Manager shall have the power on behalf of the Provider in connection with any matter relating to the performance of the Services and shall exercise the rights, functions and obligations of the Provider under the Agreement.
- 5.1.4 To the extent it is reasonably possible the Provider shall not change the identity of the Provider's Manager without first discussing the matter with the Authority and having reasonable regard to the views of the Authority in relation to any proposed replacement.
- 5.1.5 The Provider's Manager shall attend a [monthly/quarterly] meeting with the Authorised Officer (at times and at the locations specified by the Authorised Officer) to review the provisions of the Service, the achievement or not by the Provider of the Performance Standards and any other matters

relating to the operation of the Service, including determination of those issues to be referred to the Partnership Board.

5.2 Partnership Board

5.2.1 The parties shall use all reasonable endeavours to set up and participate in a Partnership Board within 3 months of the Commencement Date and agree to be bound by the partnering terms set out in Schedule 13 (Partnering Terms).⁵

5.3 Good Faith

5.3.1 The parties and their Representatives shall at all times in relation to the Agreement and the performance of the Service act reasonably and in good faith.

5.4 Assistance in Legal Proceedings

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

5.4.2 Where the Provider becomes aware of any incident, accident or other matter which may give rise to a complaint to the Local Government Ombudsman or a claim or legal proceedings in respect of the provision or failure to provide the Services, it shall notify the Authorised Officer in writing as soon as practicable and in any event within 48 hours. Such notification in writing shall include all relevant information which is not confidential to enable the Authorised Officer to investigate the matter fully.

5.4.3 Such information provided or assistance rendered pursuant to clauses 5.4.1 and 5.4.2 above, in whatever form, shall be at no cost to the Authority unless otherwise ordered or determined in any decision or other outcome of any such inquiry, arbitration, court proceedings or enquiry by the Local Government Ombudsman.

6. WARRANTIES & ACKNOWLEDGEMENTS

6.1 Authority Warranty

6.1.1 The Authority warrants that the information supplied by the Authority to the Provider and listed in Schedule 15 (Information Warranty) which the Provider has not been able to verify as a consequence of such information being confidential to the Authority, is accurate in all respects.

⁵ The partnering terms can deal with a variety of issues such as developing strategic plans for impending Variations to the Service, reviewing the Services, developing proposals to increase recycling rates and public participation in the Services, determining how open book accounting is to be dealt with etc.

6.2 Authority Liability to be Excluded

- 6.2.1 The Provider acknowledges subject to clause 6.1 (Authority Warranty) and clause 6.2.2 that the Authority and its Representatives shall not be liable to the Provider in contract, tort (including misrepresentation, negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy or misrepresentation of any information (in any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a party to the Agreement or not).
- 6.2.2 Clause 6.2.1 shall not apply to any statement, representation or warranty made fraudulently or to any provision of the Agreement which was induced by fraud, for which the remedies available shall be all those available under Law.

6.3 Provider Warranties

- 6.3.1 The Provider warrants and represents that:
- (a) it has the full capacity and authority to enter into and to perform each of its obligations under the Agreement;
 - (b) the Agreement is executed by a duly authorised representative of the Provider;
 - (c) that the information supplied in the Provider's Tender is true and accurate;
 - (d) there are no material facts or circumstances in relation to the financial position or operational constitution of the Provider which have not been fully and fairly disclosed to the Authority and which if disclosed might reasonably have been expected to affect the decision of the Authority to enter into the Agreement; and
 - (e) in entering into the Agreement, it has not committed any Prohibited Act.

6.4 Acknowledgements

- 6.4.1 Subject to clause 6.1 (Authority Warranty), the Provider shall be deemed to have:
- (a) gathered all information necessary to perform its obligations under the Agreement; and
 - (b) satisfied itself as to the nature and extent of the risks assumed by it under the Agreement and the accuracy of the rates and prices it has stated in the Schedule 2 (Pricing Schedule).

7. PREMISES AND ASSETS

7.1 Authority Premises

- 7.1.1 The Authority Premises shall be made available to the Provider in accordance with the Lease,⁶ which shall be entered into between the parties on the Commencement Date.
- 7.1.2 The Provider shall only be entitled to use and occupy the Authority Premises in accordance with the Lease (subject at all times to the requirements of all Necessary Consents) and shall not, unless otherwise approved in writing by the Authority use the Authority Premises for any other purpose other than to perform the Services.
- 7.1.3 The Authority shall be liable for all Environmental Liability arising from or in relation to any Authority Premises or from any properties adjoining Authority Premises and which are owned or occupied by the Authority, except to the extent such liability arises from any action, omission, default or negligence by the Provider in carrying out any of its obligations under the Agreement.
- 7.1.4 The [Authority]⁷ shall undertake condition surveys to determine the state and condition of the land and buildings forming part of the Authority Premises in light of the repairing conditions of each party as set out in the Lease:
- (a) no later than [2] months following the Commencement Date; and
 - (b) no later than one month following the Termination Date,
- and the costs of such surveys shall be [borne equally between the parties]⁸.
- 7.1.5 If the Agreement is terminated for any reason prior to the end of the Term, the Lease shall automatically cease and determine with effect from the Termination Date. Transfer of the Authority Premises back to the Authority upon the Termination Date shall be dealt with in accordance with the yielding up provisions of the Lease.

7.2 Necessary Consents

- 7.2.1 Subject to clause 7.2.2, the Provider shall at its own cost use all reasonable endeavours to obtain a Waste Management Licence for the [*insert names of Authority Premises which require WMLs*] no later than [30] days following the Commencement Date.
- 7.2.2 Unless otherwise agreed, the requirement to use all reasonable endeavours in clause 7.2.1 shall not extend to any obligation on the Provider to appeal any decision of the Environment Agency.
- 7.2.3 If the application made for a Waste Management Licence under clause 7.2.1 is refused, or if the application is approved, but subject to such onerous terms which mean either the Provider is unable to perform the

⁶ Where the Provider is to be granted exclusive occupation of a defined area then a lease, rather than a licence to occupy is likely to be the most appropriate property interest to grant to the Provider. The lease needs to cover, as a minimum, issues such as exclusion of security of tenure, rights of access, repairing obligations and yielding up requirements – Authorities should seek their own legal advice in relation to property rights.

⁷ Or the Provider as appropriate

⁸ The alternative is to have one party incur all the costs

Services in accordance with the terms of the Agreement or the Provider is unable to provide the Services for the prices set out in Schedule 2 (Pricing Schedule), then the parties shall meet and agree a way forward and any failure to agree shall be resolved pursuant to clause 17 (Problem Solving, Dispute Avoidance and Resolution).

7.2.4 On or prior to the Commencement Date the Authority shall (subject to approval by the Environment Agency) transfer to the Provider and the Provider shall accept (subject to clause 7.2.5) the Waste Management Licences relating to *[insert name of Authority Premises where the WML are to be transferred to the Provider]*.

7.2.5 If, as a condition of approving the transfer of a Waste Management Licence to the Provider pursuant to clause 7.2.4 the Environment Agency imposes such onerous terms which mean either the Provider is unable to perform the Services in accordance with the terms of the Agreement or the Provider is unable to provide the Services for the prices set out in Schedule 2 (Pricing Schedule), then the parties shall meet and agree a way forward and any failure to agree shall be resolved pursuant to clause 17 (Problem Solving, Dispute Avoidance and Resolution).

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

7.2.7 Upon the Termination Date the Provider shall transfer to the Authority (or a third party nominated by the Authority and approved by the Environment Agency) free of charge the Waste Management Licences relating to the Authority Premises and the Authority shall use reasonable endeavours to procure such transfer to the Authority (or such third party as aforesaid).

7.3 **Provider Premises**

7.3.1 Save in respect of the Authority Premises to be made available by the Authority, the Provider shall be responsible for providing all Provider Premises.

7.3.2 The Provider shall:

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

7.4 Authority Assets⁹

- 7.4.1 The Authority shall make available to the Provider for the Term the Authority Assets for the purpose of providing the Services. The Provider shall not use the Authority Assets for the provision of services to any third party without the prior written consent of the Authority.
- 7.4.2 The Provider shall not dispose of, assign or deal with, mortgage or underlet the Authority Assets or create any lien over them and the Provider shall:
- (a) operate, keep in repair and maintain the Authority Assets in accordance with Good Industry Practice and any manufacturer's recommendations;
 - (b) insure the Authority Assets in accordance with clause 10 (Insurance); and
 - (c) provide replacements when breakdowns occur or where an Authority Asset ceases to work effectively.
- 7.4.3 Upon the Termination Date the Provider shall return to the Authority the Authority Assets as repaired in accordance with and in the condition required by the provisions of the Agreement.¹⁰

7.5 Provider Assets

- 7.5.1 Save in respect of the Authority Assets provided pursuant to clause 7.4 (Authority Assets), the Provider shall be responsible at its own cost for providing all Provider Assets.
- 7.5.2 All Provider Assets used for the purpose of supplying the Services must be either owned by the Provider or hired by the Provider pursuant to a contract of simple hire (and not hire purchase) which contract must contain a clause permitting the Provider to assign the benefit of such contract to the Authority.
- 7.5.3 Throughout the Term the Provider shall:
- (a) Operate, keep in repair and maintain the Provider Assets in accordance with Good Industry Practice and any manufacturer's recommendations;
 - (b) insure the Provider Assets in accordance clause 10 (Insurance); and
 - (c) provide replacements when breakdowns occur or a Provider Asset ceases to work effectively.

⁹ If any Authority Assets to be made available to the Provider are subject to leases, then a requirement must be placed on the Provider to accept the transfer of such leases and abide by the lease terms. Alternatively the Provider should pay the costs of terminating the leases where such assets are not transferred.

¹⁰ Where certain Authority Assets are not to transfer back to the Authority at the expiry of the Term (e.g. refuse vehicles) then this should be noted in this clause.

7.6 Transfer of Assets

- 7.6.1 Not less than [6] months prior to expiry of the Term or in the case of early termination as soon as practicable, the Authority shall issue a notice in writing to the Provider indicating which, if any, of the Provider Assets the Authority requires to be transferred to it or any New Provider for the purpose of continuing the provision of the Service or services the same as or similar to the Services (a **Transferring Assets Notice**).
- 7.6.2 As soon as practicable (but in any event within [30] days) after the Provider receives the Transferring Assets Notice the Provider shall identify in writing the Transferring Assets and the value of each Transferring Assets being the [current market value]¹¹ (exclusive of VAT) fixed by a valuer approved by both parties acting as expert and not as arbitrator (the **Value**).
- 7.6.3 As soon as practicable after the Value of the Transferring Assets has been determined pursuant to clause 7.6.2, the Authority shall confirm in writing which Transferring Assets are to transfer to it and subject to payment of the Value by the Authority, the Provider shall transfer the Transferring Assets to the Authority or any New Provider (as determined by the Authority) on the Delivery Date, at such place as the Authority shall specify.
- 7.6.4 Risk in the Transferring Assets shall pass to the Authority or the New Provider (as appropriate) upon delivery and title to such Transferring Assets shall pass to the Authority or the New Provider (as appropriate) on payment of the Value for the same.

7.7 Rights of Access

- 7.7.1 The Provider shall at all times during the Term allow the Authority and its Representatives access on reasonable notice during normal working hours (save in the case of emergency where no notice shall be required) to the Premises for the purpose of:
- (a) monitoring and inspecting work being performed in order to provide the Services; and
 - (b) inspecting all Assets and systems and procedures used by the Provider to provide the Services.¹²

8. PERFORMANCE AND MONITORING

8.1 Quality Assurance and Service Delivery Plans

- 8.1.1 The Provider shall ensure that all aspects of the Service are carried out in accordance with the Quality Management System and the Service Delivery Plans.
- 8.1.2 Throughout the Term the Provider shall continue to maintain and seek accreditation under the Quality Management System.

¹¹ Alternatively the parties may agree to value the Transferring Assets at net book value calculated on a straight line depreciation

¹² The Authority should ensure this list adequately covers the scenarios where it will need to obtain access to the Premises. If not, please add additional scenarios to clause 7.7.1.

8.2 Review and Monitoring of Performance

- 8.2.1 The Authorised Officer may investigate each case where the Provider may have or appears to have failed, for whatever reason, to perform the Services in whole or in part in accordance with the provisions of the Agreement (“a **Default**”).
- 8.2.2 Where the Authorised Officer is satisfied that in any particular case the Provider is in Default he shall be entitled to instruct the Provider to remedy the Default within such reasonable period as the Authorised Officer may determine by issuing a Remediation Notice, unless the Default, in the opinion of the Authorised Officer, falls within clause 8.3.
- 8.2.3 If the Provider fails to comply with any Remediation Notice issued by the Authorised Officer, the Authorised Officer shall be entitled to issue a Default Notice to the Provider specifying:
- (a) the nature of the Default; and
 - (b) instructions to the Provider to remedy the Default within such reasonable period as the Authorised Officer may determine.
- 8.2.4 The administrative costs together with the cost of re-inspection incurred by the Authority in respect of each Default Notice issued shall be £[50.00]¹³ and such sums shall be deducted from the Provider's monthly statement in accordance with clause 13.2 (Ascertainment of Amounts Due in Certificates). The parties agree the amounts of the deductions stated in this clause constitute liquidated damages for administration and re-inspection and are not a penalty.
- 8.2.5 If the Provider fails to remedy any Default which is the subject of a Default Notice in accordance with the time limits set out therein pursuant to clause 8.2.2, a second Default Notice shall be issued requesting the Provider to remedy the Default within 24 hours of the issue of the second Default Notice and thereafter a further Default Notice shall be issued every 24 hours until the Authorised Officer is satisfied that the Default has been remedied and the Authority shall be entitled to:
- (a) engage another contractor to carry out the work which is the subject of the Default Notice which has not been remedied and recover from the Provider all costs and expenses associated therewith, including any administration costs; and/or
 - (b) invoke the termination provisions under clause 15.2.1 where the failure amounts to a Persistent Breach.
- 8.2.6 The Authorised Officer shall endeavour to issue all Default Notices in writing but in the event that this is not practicable it may do so verbally (whether in person or by telephone) and shall confirm the issue of such Default Notices in writing as soon as reasonably practicable. The response times for the

¹³ The amount sought to be recovered by the Authority must represent a reasonable estimate of the administration costs to be incurred by the Authority when issuing a Default Notice.

Default Notices shall begin at the time of the transmission of the relevant notice either verbally or in writing by the Authorised Officer.

8.3 Irremediable Default

- 8.3.1 The Authorised Officer may issue a Default Notice to the Provider where a Default may have or appears to have occurred that is not capable of being remedied (“an **Irremediable Default**”).
- 8.3.2 Where the Authorised Officer is satisfied that in any particular case the Provider is in Irremediable Default he shall be entitled to issue a Irremediable Default Notice to the Provider specifying:
- (a) the nature of the Irremediable Default; and
 - (b) request written acknowledgment from the Provider within [24 hours] of the date of the Irremediable Default Notice that an Irremediable Default exists.
- 8.3.3 On expiry of the [24 hour] notice period within the Irremediable Default Notice the Authority shall be entitled to invoke the termination provisions under clause 15.2.1.
- 8.3.4 The administrative costs incurred by the Authority in respect of each Irremediable Default Notice issued shall be [£50.00]¹⁴ and such sums shall be deducted from the Provider's monthly statements in accordance with clause 13.2 (Ascertainment of Amounts Due in Certificates). The parties agree the amount of the deduction stated in this clause shall constitute liquidated damages for administration and are not a penalty.
- 8.3.5 The Authorised Officer shall endeavour to issue all Irremediable Default Notices in writing but in the event that it is not practicable it may do so verbally (whether in person or by telephone) and shall confirm the issue of such Irremediable Default Notices in writing as soon as reasonably practicable. The response times for the Irremediable Default Notices shall begin at the time of the transmission of the relevant notice either verbally or in writing by the Authorised Officer.

8.4 Provider Direct Monitoring

- 8.4.1 Where the Provider is unable to perform the Services or any part of it at any time, the Provider shall immediately inform the Authorised Officer and confirm the same in writing giving details of the circumstances reasons and likely duration of the delay in Services. The provision of information in accordance with this clause shall not in any way release or excuse the Provider from any of its obligations under the Agreement.
- 8.4.2 The Provider's Manager shall be available to attend any inspection or meeting at agreed times if so requested by the Authorised Officer. The Provider's Manager shall be required to provide sufficient management information in such detail as to satisfy the Authorised Officer of its working arrangements.

¹⁴ The amount sought to be recovered by the Authority must represent a reasonable estimate of the administration costs to be incurred by the Authority when issuing a Default Notice.

- 8.4.3 The Provider shall maintain up-to-date records of its own monitoring system and shall make these records available as part of any regular contact meetings or upon the reasonable request of the Authorised Officer.
- 8.4.4 The scope and content of the monitoring records should be such as to assure the Authorised Officer that a true and objective assessment of performance and quality of the Service is being undertaken and that problems or potential problems are identified and corrected as early as possible.
- 8.4.5 Without prejudice to other rights and remedies available to the Authority, the Provider shall take any necessary action required to correct or pre-empt any problems or potential problems identified by the Authorised Officer as a result of the monitoring procedures specified in the Agreement.
- 8.4.6 The Provider shall develop a quality system for managing any complaint it receives relating to the Services to the satisfaction of the Authorised Officer. If any person or organisation makes a complaint concerning the Services, the Provider shall immediately investigate the complaint and take such corrective action as is appropriate.

9. INFORMATION AND REPORTING

9.1 Provider's Records

- 9.1.1 Throughout the Term the Provider shall supply to the Authorised Officer such information relating to the Service as is set out in the Specification at the times and frequencies set out therein.¹⁵
- 9.1.2 The Provider shall keep and maintain written records of the procedures adopted by it in order to provide the Service and shall make the same available to the Authority upon reasonable request.
- 9.1.3 The Provider shall supply the Authority with such assistance, data and information as the Authority may reasonably require so far as the same is necessary to enable it to comply with the Best Value Accounting Code of Practice issued by Chartered Institute of Public Finance and Accountancy.

9.2 Data Protection

- 9.2.1 The Authority and the Provider shall ensure that it and its Representatives comply in all respects with the provisions of the Data Protection Act 1998 in relation to all information made available to each other throughout the Term.

9.3 Statutory and Regulatory

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

¹⁵ The Specification needs cover all the waste reporting requirements, including details of the nominated delivery points, waste movement audit trails, weighbridge ticketing requirements, collection statistics (e.g. missed bin rates and complaints) etc

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

9.4 **Intellectual Property¹⁶**

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

9.5 **Confidentiality**

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

9.5.2 Clause 9.5.1, shall not apply to:

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

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

¹⁶ Where a contract involves processes where intellectual property ("IP") rights exist or will apply e.g. in a composting process, further detailed provisions on the use of such IP will need to be inserted.

- 9.5.4 The Provider shall not make use of the Agreement or any information issued or provided by or on behalf of the Authority in connection with the Agreement otherwise than for the purpose of providing the Services, except with the prior written consent of the Authority.
- 9.5.5 Upon the Termination Date the Provider shall upon request by the Authority ensure that all documents or computer records in its possession, custody or control, which contain personal information, including any documents in the possession, custody or control of a Sub-Contractor, are either delivered up to the Authority or destroyed as directed.
- 9.5.6 The parties acknowledge that the National Audit Office has the right to publish details of the Agreement (including commercially sensitive information) in its relevant reports to Parliament.

9.6 **Publicity**

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

9.7 **Information Laws**

- 9.7.1 Notwithstanding clause 9.5 (Confidentiality) the Provider acknowledges that the Authority is subject to obligations under the Information Laws and shall in all respects and at no additional cost to the Authority co-operate promptly with the Authority's requests to assist the Authority in complying with its disclosure obligations under the Information Laws.
- 9.7.2 The Provider agrees that:
- (a) without prejudice to the generality of clause 8.5 (Confidentiality) the provisions of clause 9.5 are subject to the Authority's obligations and commitments under the Information Laws;
 - (b) subject to clause 9.7.3 the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority; and
 - (c) where the Authority is managing a request for information made pursuant to the Information Laws, the Provider shall co-operate with the Authority and shall respond within 5 working days of any request by the Authority for assistance in determining how to respond to a request for disclosure.
- 9.7.3 The Authority will consult with the Provider in writing in relation to any request for disclosure of the information set out in Schedule 10 (Provider Confidential Information)¹⁷ in accordance with the Information Laws.
- 9.7.4 The Provider shall not respond directly to a request for information regarding the Agreement pursuant to the Information Laws unless it is expressly authorised to do so by the Authority or is required to do so by Law

¹⁷ Tenderers should be asked as part of their tender submission to detail which part of their tender they consider confidential and not subject to the Information Laws.

(in which case the Authority must be notified of the disclosure as soon as reasonably possible).

10. **INSURANCES**

10.1 **Insurance Requirements**

- 10.1.1 The Provider shall at its own cost take out and maintain the insurances described in Schedule 6 (Insurances)¹⁸ and any other insurance as may be required from time to time by Law with reputable insurers of good standing within the European Union (the **Required Insurances**). The required Insurances must remain in place for the Term and be effective in each case not later than the Commencement Date.
- 10.1.2 If the Provider is in breach of clause 10.1.1, the Authority may pay any premiums required to keep the Required Insurances in force or itself procure such insurances and may in either case recover such amounts from the Provider together with an administration charge of [£]¹⁹ either by way of deductions from amounts payable by the Authority to the Provider under the Agreement or by recovering the same as a debt due to the Authority from the Provider.
- 10.1.3 Upon reasonable written notice from the Authorised Officer the Provider shall furnish to the Authorised Officer, as and when reasonably required copies of current policies or certificates of brokers or other evidence which shows to the reasonable satisfaction of the Authorised Officer that the requirements of clause 10.1.1 are being met.
- 10.1.4 No party to the Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would, or is likely to entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.
- 10.1.5 The Provider shall notify the Authority within 30 days after any claim in excess of [£X] on any of the insurance policies referred to in this clause 10.1 accompanied by full details of the incident giving rise to the claim.
- 10.1.6 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in clause 10 (Indemnities and Limitations on Liability).

¹⁸ The insurances typically required to be held by a Provider include third party liability claims, material damage claims and employer's liability insurance. Where there are design or construction requirements additional insurances for professional indemnity and construction all risks would be appropriate. Note the Provider should only be required to take out insurances from which the Authority derives a benefit.

¹⁹ The administration charge sought to be recovered by the Authority must represent a reasonable estimate of the administration costs likely to be incurred by the Authority taking out the Required Insurances

11. INDEMNITIES AND LIMITATIONS ON LIABILITY

11.1 Indemnities

- 11.1.1 The Provider shall indemnify and keep indemnified the Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of contract (including but without limitation any breach of its obligations under clauses 14.4 (Provider's Obligations and Indemnities) and 14.5 (Measures on Termination of Agreement)) or breach of Law arising out of or in connection with any act or omission of the Provider or its Representatives under the Agreement, save to the extent that the same is caused by or arises from the negligence, breach of contract or breach of Law arising out of or in connection with any act or omission of the Authority or its Representatives under the Agreement.
- 11.1.2 Notwithstanding any other provision of the Agreement neither party will be liable to the extent permitted by Law to the other party in connection with the Agreement and/or any documents entered into pursuant to or in connection with the Agreement (including without limitation the Lease) for any indirect special or consequential loss or damage which includes, but is not limited to any loss of profit, revenue, anticipated savings, use, goodwill or business opportunities (whether direct or indirect).²⁰
- 11.1.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to the Agreement.
- 11.1.4 Notwithstanding any other provision of the Agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) loss of or damage to property; or
 - (c) death or personal injury caused by its negligence.

12. HEALTH AND SAFETY

12.1 Health and Safety Management

- 12.1.1 The Provider shall ensure that all health and safety matters concerning the Agreement are dealt in accordance with:
- (a) the Health and Safety Policy; and
 - (b) the Health and Safety at Work etc Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons.
- 12.1.2 The Provider shall:

²⁰ The Authority needs to consider the implications of this clause on a case-by-case basis as there may be specific losses that it will want the Provider to liable for and these should be specifically named. In addition, or as an alternative to giving a Provider the benefit of this clause, the Authority may agree financial limits or caps on liability. Such limits are likely to offer the Authority better value for money.

- (a) conduct the Services so as to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Authority's Representatives and the Provider's Staff; and
- (b) accept full responsibility for the day-to-day operational aspects of health and safety while performing the Services.
- (c) inform the Authority immediately of any breaches in health and safety law and regulation;
- (d) Co-operate fully with the Authority in its monitoring of health and safety standards; and
- (e) inform the Authority immediately of any health and safety issues relating to the Authorities' health and safety responsibilities,

pertaining to the Contract

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

13. **PAYMENT PROVISIONS**

13.1 **Payments**

- 13.1.1 In consideration of the Provider carrying out its obligations under the Agreement the Authority shall pay to the Provider the Contract Price as set out in Schedule 2 (Pricing Schedule) in accordance with this clause 13 (Payment Provisions).
- 13.1.2 At the end of each calendar month, the Provider shall submit to the Authorised Officer an invoice in respect of the work forming part of the Services which has been completed by the Provider during the previous calendar month in a format to be agreed between the parties.
- 13.1.3 Within 30 days of the receipt of the invoice the Authorised Officer shall issue a certificate certifying the amount properly due to the Provider in accordance with the Agreement which shall take into account any adjustments made in accordance with clause 13.2 (Ascertainment of Amounts due in Certificates) and the Authority shall pay to the Provider such amount as is properly certified and due within 30 days following receipt of the Provider's invoice.
- 13.1.4 [The method of payment to be used by the Authority will be an electronic transfer to the Provider's bank account].

13.2 **Ascertainment of Amounts Due in Certificates**

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

- (a) less any previous payments made to the Provider for that part of the Services;
- (b) less any deductions ascertained in accordance with clause 8.2 (Review and Monitoring of Performance);
- (c) less any payment in respect of any Services which the Provider has either failed to provide or has provided inadequately; and
- (d) any other additions or deductions as otherwise authorised in the Agreement.

13.3 **Disputed Invoices**

13.3.1 Where either party disputes any sum to be paid to it then a payment equal to the sum not in dispute shall be paid and the Dispute as to the sum that remains unpaid shall be referred to clause 17 (Problem Solving, Dispute Avoidance and Resolution).

13.4 **Interest on Late Payments**

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

13.5 **Taxes**

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

13.5.2 Any Environmental Taxes payable relating to the Services shall be paid by the appropriate party as set out in Schedule 2 (Pricing Schedule).²¹

13.6 **Indexation**

13.6.1 The prices contained in Schedule 2 (Pricing Schedule) shall be reviewed on each anniversary of the Commencement Date (the **Review Date**) and shall be increased or reduced by a percentage equivalent to the percentage increase or reduction (if any) shown by the Index since the last Review Date (or in the case of the first Contract Year, since the Commencement Date) and such increase or reduction shall take effect in respect of the 12 month period commencing on the relevant Review Date.

13.7 **Audit**

²¹ This would need to cover liability for landfill tax etc

- 13.7.1 The Provider shall install and implement such apparatus and systems as the Authorised Officer may from time to time require to ensure that the Authority is charged for and pays only such amounts as it is obliged to under the terms of the Agreement.
- 13.7.2 The Provider shall at all times maintain a full record on an open book basis of particulars of the costs of performing the Services and shall keep books of accounts in accordance with best accountancy practice with respect to the Services showing the following detail:
- (a) administrative overheads;
 - (b) payments made to Sub-Contractors;
 - (c) capital and revenue expenditure.
- 13.7.3 The Provider shall permit records referred to in this clause 13.7 to be examined and copied by the Authority and the Authority's auditor and their Representatives.
- 13.7.4 The records referred to in this clause shall be retained for a period of at least 6 years after the Termination Date.
- 13.7.5 All information referred to in this clause is subject to the obligations set out in clause 9.5 (Confidentiality) and clause 9.7 (Information Laws).

14. **EMPLOYEES**

14.1 **Employees**

- 14.1.1 Throughout the Term the Provider shall be responsible for ensuring that it has sufficient Staff for the proper and efficient performance of the Services and that Staff:
- (a) are at all times adequately supervised and are discharging their duties in accordance with the Agreement;
 - (b) where agreed to be provided as part of the Service Delivery Plans, will be assigned to work on the Services;
 - (c) observe all Health and Safety Policies and security requirements in relation to any Premises where they discharge their duties;
 - (d) are properly attired according to the nature of their duties in identifiable uniforms and, where necessary, protective clothing and footwear;
 - (e) disclose their identity to the Authority or to any third party on request;
 - (f) do not solicit or act in such a manner as to induce payment for performance of the Services; and

- (g) are informed of all aspects of the Agreement which are directly applicable to them.

14.2 **Equal Opportunities and Human Rights**

- 14.2.1 The Provider is required to have in place an equal opportunities policy. This policy must specify that the Provider will not treat Staff less favourably on the grounds of their colour, age, race, ethnic or national origin, nationality (including citizenship), marital status, sex, sexual orientation, religion or belief, or because they have a disability. The policy must also specify that the Provider will not tolerate behaviour which is inconsistent with it and detail the measures it will take if this occurs.
- 14.2.2 In the performance of the Service and in its dealings with service users, Authority Representatives and members of the general public, the Provider shall comply and shall ensure that its Staff comply with:
 - (a) the Human Rights Act 1998 as if the Provider were a public body (as defined in the Human Rights Act 1998);
 - (b) all Laws relating to equal opportunities, including but without limitation relating to disability discrimination, sex discrimination and race relations; and
 - (c) the Authority's equal opportunities policies and procedures as may be adopted and amended from time to time and as notified to the Provider.

14.3 **Acknowledgement of TUPE ²²**

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

14.4 **Provider's Obligations and Indemnities**

- 14.4.1 The Provider shall be responsible for all emoluments and other benefits in respect of its Staff and shall procure that any Sub-Contractor shall be responsible for the same in respect of its Staff including, without, limitation all wages, holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and otherwise which are attributable to the period from the Commencement Date.
- 14.4.2 In the event that the Authority becomes liable for any claims brought by the Transferring Employees arising out of the acts or omissions of the Outgoing Provider prior to the Commencement Date the Provider shall indemnify and keep indemnified the Authority in full against any claim or claims.

²² This type of clause is only required where there is a TUPE transfer of staff from an existing provider

- 14.4.3 The Provider shall indemnify and keep indemnified the Authority against any claim or claims by a Transferring Employee made against the Authority arising out of any proposal by the Provider prior to the Commencement Date to make a significant change (other than in respect of those changes the Provider is obliged to make in accordance with the Authority's instructions) to the working conditions of any Transferring Employee to his detriment or as a result of the Provider's identity as the Transferring Employee's new employer amounting to a significant change and to his detriment in contravention of Regulation 4(9) of the TUPE Regulations.²³
- 14.4.4 The parties shall comply with their respective obligations under Regulation 13 of the TUPE Regulations at all times during the Term.
- 14.4.5 The Provider shall indemnify and keep indemnified the Authority and the New Provider against any claim or claims by any person who is or was an employee of the Provider or Sub-Contractor made against the Authority and/or the New Provider arising out of any acts or omissions of the Provider or Sub-Contractor which occur prior to the Relevant Transfer Date.

[insert pension provisions if appropriate].

14.5 **Measures on Termination of Agreement**²⁴

- 14.5.1 During the period of 12 months preceding the end of the Term or immediately after the Authority or the Provider has given notice to terminate the whole or part of the Agreement the Provider shall:
- (a) as soon as reasonably practicable, at the request of the Authority, fully and accurately disclose to the Authority the TUPE Information in respect of the Assigned Employees which the Authority and/or a Prospective Tenderer and/or a New Provider may reasonably require and permit the Authority to use the TUPE Information supplied (subject to the Authority complying with its obligations under the Data Protection Act 1998 and appropriate obligations of confidentiality) to inform any Prospective Tenderer and/or New Provider about the Assigned Employees. If during the period between supplying the TUPE Information and the Relevant Transfer there is any material change in the TUPE Information supplied or new information is discovered, the Provider shall, as soon as reasonably practicable disclose to the Authority the updated information;
 - (b) use all reasonable endeavours to co-operate with any other reasonable request made by the Authority concerning the TUPE Information requested under clause 14.5.1(a); and
 - (c) shall not, without the prior written agreement of the Authority (such agreement not to be unreasonably withheld or delayed), materially alter or change any of the terms and conditions of employment of an Assigned Employee or replace any Assigned Employee or deploy any employee other than an Assigned

²³ Again this type of clause will only be relevant where there is a transfer of staff from an existing provider.

²⁴ These are general TUPE clauses and Authorities should seek their own legal advice in relation to the application and consequences of the TUPE Regulations.

Employee to perform the Services or remove from the provision of the Services any Assigned Employee or materially increase the number of persons performing the Service.

- 14.5.2 If the Provider fails to provide or keep updated the TUPE Information requested in clause 14.5.1 then the Authority may, without prejudice to any other rights it may have under the Agreement, disqualify or disallow or otherwise bar the Provider from tendering for the New Agreement, or other contract.

15. TERMINATION

15.1 Termination on Authority Default ²⁵

15.1.1 If during the Term the Authority:

- (a) fails to make payment of any amount (other than any amount being disputed in good faith in accordance with clause 13.3 (Disputed Invoices)) of money exceeding [10]% of the annual Contract Price that is due and payable by the Authority in accordance with the terms of the Agreement within [45] days of the date that the amount fell due for payment; or
- (b) breaches any of its obligations under the Agreement which substantially frustrates or renders it impossible for the Provider to perform its obligations under the Agreement for a continuous period of [2] months,

(an **Authority Default**), the Provider may, without prejudice to any rights or remedies already accrued, elect to terminate the Agreement in accordance with clauses 15.1.2 and 15.1.3 below.

15.1.2 If an Authority Default has occurred and the Provider wishes to terminate the Agreement, it must serve a termination notice on the Authority within [30] days of becoming aware of the Authority Default specifying the nature of the Authority Default and the Provider's intention to terminate.

15.1.3 The Agreement will terminate on the day falling [45] days after the date the Authority receives the termination notice, unless the Authority rectifies the Authority Default within [14] days of receipt of the termination notice.

15.2 Termination for Provider Default ²⁶

15.2.1 If, during the Term the Provider commits a Provider Default which will arise where the Provider:

²⁵ Where the Authority has other specific obligations under the Agreement (for example to deliver a minimum tonnage or a particular type of waste composition) then provisions allowing the Provider terminate where the Authority fails or is in breach of those obligations (similar to those set out in clause 15.2 (Termination for Provider Default)) should be included.

²⁶ Where the project involves third party finance the parties may wish to permit the lender to step-in and assume the liabilities of the Provider where the Provider is in default. This needs to be dealt with via a direct agreement between the Authority and the lender which sets out when the lender is entitled to step in, what extent of liabilities it will assume and the extent to which the lender is given an opportunity to rectify the Provider's breach.

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

then the Authority may serve a termination notice on the Provider.

15.2.2 The termination notice referred to in clause 15.2.1 must specify:

- (a) the type and nature of Provider Default that has occurred; and
- (b) that all or part of the Agreement will terminate on the day falling [30] days after the date the Provider receives the termination notice unless the Provider rectifies the Provider Default within 14 days of receipt of the termination notice.

15.2.3 The Authority shall be entitled to extend the timeframes specified in clause 15.2.2 (b) to such other times as may be reasonable.

15.2.4 If the Provider:

- (a) rectifies the Provider Default within the time period specified in the termination notice, the termination notice will be deemed to be revoked and the Agreement will continue;
- (b) fails to rectify the Provider Default within the time period specified in the termination notice then the Authority may, without prejudice to any accrued rights or remedies under the Agreement, terminate the Agreement on the day specified in the termination notice which date shall fall on a day up to 90 days of the receipt of the termination notice.

15.3 **Termination on Provider Insolvency**

15.3.1 If the Provider:

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

- (b) has a winding up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed;
- (c) has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
- (d) has an administrative receiver, as defined in the Insolvency Act 1986, appointed; or
- (e) has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in, or subject to, the floating charge,

then in any such circumstance the Authority may, without prejudice to any accrued rights or remedies under the Agreement, terminate the Agreement forthwith by written notice with immediate effect or subject to written notice to the Provider terminate on any day which day shall be stated in the termination notice and which shall be a date falling up to 90 days after the date of receipt of the termination notice.

15.4 Termination on Corrupt Gifts or Fraud

- 15.4.1 If a Prohibited Act is committed by the Provider or by any of its Representatives not acting independently of the Provider, then the Authority may, without prejudice to any accrued rights or remedies under the Agreement, terminate the Agreement forthwith by written notice with immediate effect or subject to written notice to the Provider terminate on any day which day shall be stated in the termination notice and which shall be a date falling up to 90 days after the date of receipt of the termination notice.
- 15.4.2 If the Prohibited Act is committed by any Representative of the Provider acting independently, then the Authority may, without prejudice to any accrued rights or remedies under the Agreement, terminate the Agreement by written notice and the Agreement will terminate on the date specified in the termination notice which shall be a date within 90 days of receipt of such termination notice unless the Provider procures the termination of such person's employment, or (in the event that such person is not employed directly by the Provider) if such person is not acting independently of their employer, the appointment of their employer and (if necessary) procures the performance of such part of the Services by another person.
- 15.4.3 Any notice of termination under this clause 15.4 shall specify:
 - (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
 - (c) the date on which the Agreement will terminate, in accordance with the applicable provision of this clause 15.4.

15.5 Voluntary Termination by the Authority ²⁷

- 15.5.1 The Authority may, subject to clause 15.6 (Compensation on Termination) terminate the Agreement at any time on or before expiry of the Term by complying with its obligations under this clause 15.5.
- 15.5.2 Where the Authority wishes to terminate the Agreement under this clause 15.5, it must give written notice to the Provider stating:
- (a) that the Authority is terminating the Agreement under this clause 15.5 (Voluntary Termination by the Authority);
 - (b) that the Agreement will terminate on the date falling [90] days after the date of receipt of the notice; and
 - (c) the amount of the Compensation Sum payable to the Provider.
- 14.5.3 The Agreement shall terminate on the date falling [90] days after the date of receipt of the notice referred to in clause 15.5.2 above.

15.6 Compensation on Termination

- 15.6.1 Where the Authority serves written notice on the Provider of its intention to terminate in accordance with clause 15.5 (Voluntary Termination by the Authority) then the Authority shall pay the Compensation Sum to the Provider on or before the Termination Date.
- 15.6.2 If there is partial termination of the Agreement then the Compensation Sum will be reduced proportionately to reflect that part of the Services that has been retained and not terminated.
- 15.6.3 The Compensation Sum paid pursuant to this clause 15.6 shall be in full and final settlement of any claim, demand and/or proceedings of the Provider and shall be the sole remedy of the Provider in relation to termination of the Agreement or any part of it (and the circumstances leading to such termination) and the Provider shall be excluded from all other rights and remedies in respect of any such termination, save in respect of any antecedent claims, including claims for payment.
- 15.6.4 Notwithstanding any other provision of the Agreement, the Authority is not entitled to set-off any amount against any payment of the Compensation Sum under this clause 15.6.

15.7 Termination Upon Force Majeure

²⁷ Optional Clause: Voluntary termination by the Authority should be used in the very rare situation where the Authority is no longer able to continue its relationship with the Provider under the Agreement, i.e. the requirement for the Services has become redundant as a result of e.g. a change of policy or Law. In such circumstances the Provider must be compensated so it is left in the position it would have been in had the Agreement run its full course. If the Authority wish to include a voluntary termination clause in then they would have to, as part of the tendering process, ask bidders to specify the levels of compensation they would expect to receive if the Agreement were terminated in year 1, year 2, year 3 etc. Bidders responses would then need to be incorporated into the tender evaluation process - otherwise an Authority may have difficulty complying with the requirements of the restricted or open procedures under the EU Procurement Rules.

15.7.1 If a Force Majeure Event prevents either party from performing its obligations under the Agreement in any material respect for a period of [3] consecutive months then provided the notification requirements set out in clause 4 (Force Majeure) have been complied with without prejudice to any accrued rights or remedies under the Agreement, either party may terminate the Agreement by giving [30] days months notice in writing to the other party.

15.8 Expiry

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

15.9 Effect of Termination

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

15.10 Survival

15.10.1 Termination of the Agreement for any reason shall not affect this clause 15.10 and the following clauses which shall continue in force after such termination: clause 1.1 (Definitions and Interpretation); clause 5.4 (Assistance in Legal Proceedings); clause 6.2 (Authority Liability to be Excluded); clause 7.6 (Transfer of Assets) clause 9.5 (Confidentiality); clause 9.7 (Information Laws); clause 11.1 (Indemnities and Limitations on Liability) clause 13.3 (Disputed Invoices); clause 13.4 (Interest on Late Payments); clause 14.4 (Provider's Obligations and Indemnities); clause 14.5 (Measures on Termination of Agreement); clause 15 (Termination); clause 16.3.2 (Sub-Contracting); clause 17 (Problem Solving, Dispute Avoidance and Resolution); clause 18.5 (Notices); clause 18.8 (Duty to Co-operate); clause 18.11 (Set-off); clause 18.13 (Law of Contract and Jurisdiction).

16. CHANGE IN CONTROL, ASSIGNMENT AND SUB-CONTRACTING

16.1 Change of Control of Provider

16.1.1 Subject to clause 16.1.2, the Provider shall inform the Authority immediately of any change in the ownership of the Provider.

16.1.2 For the purpose of clause 16.1.1 the following circumstances shall be disregarded:

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

16.2 Assignment and Novation

16.2.1 The Provider shall not assign, novate or otherwise dispose of or create any trust in relation to all or any of its rights and obligations under the

Agreement to any person [other than to an Affiliate] without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

16.2.2 The Authority shall be entitled to:

- (a) assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof to any Contracting Authority; or
- (b) novate the Agreement to any other body established by the Crown or under statute in order to substantially perform any of the functions that previously had been performed by the Authority.

16.3 **Sub-Contracting**

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

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

16.3.3 Where the Authority has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall be sent by the Provider to the Authorised Officer within 2 working days of issue.

17. **PROBLEM SOLVING, DISPUTE AVOIDANCE AND RESOLUTION**

17.1 **Referral to the Partnership Board**

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

17.1.2 Where the Authorised Officer and the Provider's Manager do not achieve within [28] days of being notified of the Dispute a solution acceptable to all parties involved, and provided no right of termination has been exercised, then the Dispute shall be referred to the Partnership Board, or where there is no Partnership Board then clause 17.2 (Independent Expert) shall apply.

17.1.3 The Partnership Board shall use all reasonable skill, care and diligence to ensure that it receives the views of all parties and considers all solutions proposed with the objective of resolving the Dispute and achieving an agreed solution.

17.1.4 Where the Partnership Board do not achieve within 28 days of being notified of the Dispute a solution acceptable to all parties involved and provided no right of termination has been exercised, then clause 17.2 (Independent Expert) shall apply.

17.2 Independent Expert

- 17.2.1 If the Dispute cannot be resolved pursuant to clause 17.1, either party shall be entitled to refer the Dispute to be decided by a single independent expert agreed in writing by the parties or in default of such agreement within 14 days to be appointed at the request of any party by the Relevant Professional Body pursuant to clause 17.2.3 and the decision of such independent expert shall be conclusive and binding on the parties in the absence of manifest error.
- 17.2.2 The costs of the independent expert (including those of his or her appointment) as well as those of the parties shall be at the independent expert's discretion having regard, without limitation, to the conduct of the parties. The independent expert shall give the parties the opportunity to make representations and counter-representations to him or her within specified time limits.
- 17.2.3 The Relevant Professional Body shall be: -
- (a) in the case of a Dispute under clause 13 (Payment Provisions) the [Institute of Chartered Accountants in England and Wales] (or any successor body);
 - (b) in the case of a Dispute under clause 2 (the Service), clause 3 (Variations to the Service), clause 7 (Premises and Assets) and any provision of the Specification the [Chartered Institution of Wastes Management] (or any successor body); and
 - (c) for all other Disputes the [Law Society of England and Wales] (or any successor body) or such other professional body as designated or recommended by it.

18. GENERAL

18.1 Waiver and Cumulative Remedies

- 18.1.1 No term or provision of the Agreement shall be considered as waived by any party unless a waiver is given in writing by that party in a manner that expressly states that a waiver is intended and such waiver shall only be operative with regard to the specific circumstances referred to.
- 18.1.2 The rights and remedies provided by the Agreement are cumulative and, unless otherwise provided in the Agreement, are not exclusive of any right or remedies provided at Law or in equity or otherwise under the Agreement.

18.2 Counterparts

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

18.3 **Successors**

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

18.4 **Relationship of the Parties**

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

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

18.5 **Notices**

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

- (a) in the case of a notice delivered personally, at the time of delivery;
- (b) in the case of a notice sent by first class pre-paid post, 2 clear working days after the date of dispatch; and
- (c) in the case of a facsimile transmission, if sent during normal working hours then at the time of transmission and if sent outside normal working hours then on the next following working day, provided (in each case) that a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next working day.

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

18.5.3 Except as expressly provided herein, notice may not be served by electronic mail.

18.6 **Entire Agreement**

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

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

- 18.6.3 Nothing in this 18.6 shall operate to exclude any liability for fraudulent misrepresentation.
- 18.7 **Amendments**
- 18.7.1 The Agreement may not be varied except in accordance with clause 3 (Variations to the Service).
- 18.8 **Duty to Co-Operate**
- 18.8.1 The Provider shall take all reasonable steps and co-operate fully with the Authority and any New Provider so that any continuation of the Service is achieved with the minimum of disruption.
- 18.8.2 Upon the Termination Date and in the event that the Authority wishes to enter into another contract for the Service the Provider shall (and shall procure that its Sub-Contractors will) subject to the Authority complying with its obligations under the Data Protection Act 1998 and clause 9.5 (Confidentiality) comply with all reasonable requests of the Authority to provide information relating to the Provider's costs of operating and maintaining the Services.
- 18.9 **Illegality**
- 18.9.1 In the event that any part of the Agreement shall be or become or be declared void, invalid, illegal or unenforceable for any reason whatsoever including by reason of the provisions of any Law, any of any decision of any Court or Regulatory Body having jurisdiction over the parties or the Agreement, the parties hereby expressly agree that the remaining parts and provisions of the Agreement shall continue in full force and effect with such amendments to ensure that the balance of obligation remains so far as possible the same as under the Agreement or as may be agreed between the parties.
- 18.10 **Third Party Rights**
- 18.10.1 A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 18.11 **Set-Off**
- 18.11.1 Subject to clause 15.6.4, either party shall be entitled to retain or set off any amount due to it by the other party against any sums due to the other by it.
- 18.12 **Authority Standing Orders**
- 18.12.1 The Provider shall comply with the requirements of the Authority's standing orders for the time being in force and which are available for inspection during normal working hours by prior appointment with the Authorised Officer at the Authority's address as stated herein.
- 18.13 **Law of Agreement and Jurisdiction**

18.13.1 The Agreement shall be governed by and construed in accordance with the laws of England and Wales and without prejudice to clause 17 (Problem Solving, Dispute Avoidance and Resolution), each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.²⁸

IN WITNESS where the parties hereto have carried their respective Common Seals to be affixed/executed to the Agreement as a Deed the day and year first before written:

The Common Seal of **[insert name of the Authority]** was affixed in the presence of:-)
)
)

Signed as a Deed for **[insert name of the Provider]** by:

Signature

Name

Position

Signature

Name

Position

²⁸ insert Scotland or Northern Ireland as appropriate