



Council of the Isles of Scilly

INVITATION TO TENDER FOR:

***The transfer and final disposal of waste and recycling arising from
the Council of the Isles of Scilly***

CIOS Contract Notice Reference Number: 2201S_Mainland waste

DATE OF ISSUE: 7th January 2022

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Appendix A: Qualitative Selection Document

| Contract Opportunity Summary | | | |
|-------------------------------------|---|---|----------------------|
| Contract Name: | Council of the Isles of Scilly, Mainland Waste processing | Date of Contract Notice sent/ITT Available | 07/01/2022 |
| Our Contract Ref: | 2201S_Mainland waste | Clarifications Period | 10/1/22 to 28/1/2022 |
| Contract Type: | Services | Tender Return Date/Time Tender Opening | 14/2/2022 @ 1630 |
| CPV Codes: | 90500000: Refuse and waste services | Evaluation Period start | 15/02/2022 |
| Place of Delivery: | Penzance and Cornwall | Date of Notification | 13/03/2022 |
| Estimated Contract Value: | £550,000 | Standstill Period | 10 days |
| Tender Type: | Services | Earliest Date Contract Awarded | 28/03/2022 |
| Tender Response Requirement | | Anticipated Contract Commencement: | 01/04/2022 |
| Quality/Price Ratio: | Quality 40% Price 60% | Anticipated Contract Completion | 31/03/2025 |

Section A: Introduction

- A.1 The Council of the Isles of Scilly is looking for a Provider or Providers to be appointed for the transfer and final disposal of residual waste and recycling arising from the Isles of Scilly, as specified in the Council's Contract Notice Reference Number: 2201S_Mainland waste
- A.2 This is an above threshold level services contract being procured under the Open Procedure.
- A.3 Section B provides some Background to the Contracting Council and the Isles of Scilly.
- A.4 Section C contains the Instructions to Tenderers and sets out the conditions of this ITT.
- A.5 Section D provides details on the required response format and explains the evaluation process.
- A.6 Section E contains the Scope of Services.
- A.7 Prior to commencing formal evaluation, Tender Responses will be checked to ensure they are fully compliant with the conditions of Tender. Non-compliant Tender Responses may be rejected by the Council. Tender Responses which are deemed by the Council to be fully compliant will proceed to evaluation. These will be evaluated using the award criteria and weightings detailed in Section D, Clause D1 to D5.
- A.8 Following evaluation of the Tenders the Council will undertake all necessary due diligence checks, including those relating to the successful providers response to Appendix A: Qualitative Selection Document, and, subject to the due diligence checks, will award a contract to the successful provider. Where checks on the qualitative selection document make the initial successful provider non-compliant their submission will be de-selected and the next highest scoring tender will become the successful provider

Section B: Background

- B1 The Isles of Scilly is unique in terms of its geographical location, its constitution, history and community and the broad range of services that it delivers.
- B2 Situated 28 nautical miles south west of Lands-End, Cornwall, the Isles of Scilly consists of 5 inhabited islands, with an approximate total population of 2,203 (2011 census). The majority of residents live on St Mary's, the biggest of the islands, with resident populations on 4 of the off-islands of St Agnes, Bryher, Tresco and St Martin's. The population remains stable but is aging rapidly as the young leave for the mainland in pursuit of further education, jobs and homes and the elderly retire to the islands. Issues of access and social exclusion are acutely felt here.
- B3 The exceptional quality of the islands environment reflects its designation as an Area of Outstanding Natural Beauty (AONB), Conservation Area and Heritage Coast. The Conservation Area and the AONB boundaries are coincidental and cover the entire archipelago.
- B4 The economy of the islands is dominated by tourism and agriculture which leads to seasonal fluctuations in both population and waste and recycling production.
- B5 Additional general information about The Council of the Isles of Scilly can be found on the Council's website www.scilly.gov.uk
- B6 The Council of the Isles of Scilly is the most south west unitary local government Council in the UK. Employing approximately 200 members of staff and delivering a wide array of services across the islands including adult and children's social care, waste management, highways and operational services, housing and environmental health, planning and development, registration of births, marriages and deaths, coastal-defences, sea fisheries, health and safety and emergency planning.
- B7 The Council also operates St Mary's Airport, central to the local economy and the 10th busiest regional passenger airport in the United Kingdom.

Strategic context

- B8 The Government's 25 Year Environment Plan pledged to leave the environment in a better condition for the next generation.
- B9 The Resource and Waste Strategy 2018 set out how the Government aims to preserve material resources by minimising waste, promoting resource efficiency and moving towards a circular economy. The Strategy gives a clear longer-term policy direction in line with the 25-year plan outlined above through five key ambitions;
- To work towards all plastic packaging placed on the market being recyclable, reusable or compostable by 2025
 - To work towards eliminating food waste to landfill by 2030
 - To eliminate avoidable plastic waste over the lifetime of the 25-year plan
 - To double resource productivity by 2050
 - To eliminate avoidable waste of all kinds by 2050

Local context

- B10 [The Corporate Plan 2019-2023](#) sets out the Council of the Isles of Scilly's ambitions in relation to climate change, carbon reduction and waste management. In April 2019 the Council declared a Climate Emergency and set a target to become a carbon neutral organisation by 2030. As a result of the declaration, the Council is preparing its Climate Change Action plan, identifying key areas for action, notably energy consumption, waste and recycling, transport, procurement and behaviour change. A significant element of the strategy is to work with local stakeholders, residents, partners and contractors to reduce carbon emissions more widely. This will include the Waste Contract.
- B11 [The Waste Reduction Strategy \(2020-2030\)](#) sets out the Council's plans to both support the delivery of the Council's carbon neutral agenda, but also to meet the Government's requirements laid out in the Resource and Waste Strategy above.
- B12 The Waste Reduction Strategy commits to working with residents, businesses and organisations to;
- Reduce the overall volume of waste across the islands by 15% by 2025 and then by 25% by 2030
 - Increase the amount of material that is reused
 - Increase the amount of waste that is recycled or composted
 - Improve communications with householders, visitors and businesses regarding waste and recycling collection services
 - Deliver initiatives that support waste reduction, re-use, recycling and composting.
 - Provide safe, efficient, cost effective and reliable services which meet the needs of the community
 - Provide services that keep the environment and public realm attractive, clean and litter free.
- B13 The Waste Reduction Strategy is due to be reviewed following the publication of the Government's consistency in collections consultation response, due to be published in early 2022.

History of waste management on Scilly

- B14 The Isles of Scilly has undergone a transformation in how it manages its waste and recycling in recent years. Historically, the island's waste was managed through an incinerator plant on the Porthmellon Waste Site, on St Mary's which accepted waste from the off islands with very little being actively recycled.
- B15 The ageing incinerator plant was unable to keep up with the increase in waste volumes, particularly during the summer months when the island's population increases, and often failed to meet regulations set by the Environment Agency. This resulted in waste accumulating and eventually being stockpiled on site for a number of years. Subsequently the non-compliant 'landfill site' was closed.

- B16 In 2014, through £3.6million funding received from Defra, the Council worked to redevelop the Porthmellon Waste Site into a modern waste management facility, capable of receiving, managing, storing and recycling materials. The site is now fully compliant with Environmental permits in place.
- B17 In December 2018 the Council introduced a kerbside dry mixed recycling scheme for plastic, paper, card and metal across the islands, available to all householders and businesses which saw a dramatic increase in the islands recycling rates.

Current waste management in 2022 and beyond

- B18 The Council has a small team of dedicated Waste and Recycling Operatives who run the day-to-day activities at the Porthmellon on St Mary's, including the kerbside collection of household waste and recycling and emptying of public litter and dog waste bins.
- B19 The Waste Team also operate the HWRC and the Waste Transfer Station. The HWRC is open to St Mary's residents twice a week through an appointment system which was established during the Covid-19 pandemic.
- B20 The Waste Transfer Site receives household kerbside and commercial waste collections from St Mary's and the off islands. The site also accepts commercial waste from businesses across the islands either directly or via local private hauliers.
- B21 Residual waste is currently collected weekly in black bags as part of the kerbside domestic collection service on St Mary's (or more frequently for commercial collections). Residents do not have Council provided wheelie bins. Residual waste is returned to Porthmellon Waste Transfer Station where it is compacted into skips then shipped from St Mary's to Penzance quay and from there onwards for recovery to an energy from waste plant. Off island residual waste is transferred inter island to St Mary's for compaction with St Mary's waste, ready for shipping to Penzance.
- B22 Dry mixed recycling (DMR) is currently collected weekly in dedicated DMR bags provided to households for kerbside collection and transported to Porthmellon Waste Transfer Station (WTS) where it is stored securely, compacted within the plastic bags, baled and wrapped ready to be shipped to Penzance.
- B23 This is a newly adopted compacting, baling and wrapping method and has enabled the Council to achieve savings through the existing marine haulage contract through the shipping of bales on pallets, rather than in skips, which was the previous method.
- B24 The Council has recently begun to segregate high quality cardboard and is keen to explore what further savings can be achieved through the wider segregation, separate compaction, baling and wrapping of other recycling streams in line with the Government's forthcoming consistency in collections requirements.
- B25 The additional segregation of recyclables will require investment of additional equipment, collection vehicles and processing facilities on St Marys, which will be funded through the Council's capital programme and it is hoped, supplemented through the Government's New Burdens funding (to be confirmed).

- B27 Marine Haulage is not included within this contract. The Council has a marine haulage contract in place with the Isles of Scilly Steamship Company which utilises the *Gry Maritha* freight vessel for transporting waste and recycling to Penzance Quay on the mainland and the subsequent return of empty containers as part of a planned schedule.

The Challenges

- B28 There have been dramatic changes in the way waste and recycling is managed on the islands in recent years. With new national policy being introduced, we know we will need to accommodate these changes, whilst remaining resilient and flexible into the future. The Isles of Scilly has improved but lags behind in relation to best practice in other areas of the UK. There is an ambition set out in the Waste Strategy to increase our re-use of materials and significantly improve our recycling rates.
- B29 With the increasing requirement for Councils to 'do more with less' we must seek to bring financial savings for the Isles of Scilly, whilst improving the service we deliver. This is particularly evident following the first phase of covid-19 which caused a significant reduction in waste income due to the impact of the pandemic on the tourist season and the reduced waste from food outlets and accommodation providers during lock down.
- B30 Consequently, we must look at every opportunity to avoid waste and seek initiatives on-island to reduce, re-use and recycle, whilst also reducing our reliance on mainland options, wherever possible. Nonetheless, we will still need to dispose of some residual waste and recyclables to the mainland. As such, this waste contract should offer good value for money and is flexible enough to meet any changes in national guidance, legislation and the priorities of the Isles of Scilly's residents.
- B31 The geographic location of the Isles of Scilly can pose the greatest issue no matter what time of the year, although the winter months can prove more problematic with significant weather fronts rolling through which can impact waste shipments. Business continuity plans are essential.

Section C: Instructions to Tenderers

General

- C.1 These instructions are designed to ensure that all Tenderers are given equal and fair consideration. It is important therefore that you provide all the information asked for in the format and order specified. Please contact **Keith Grossett, Senior Officer: Capital Development and Procurement**, Council of the Isles of Scilly, Town Hall, St Mary's, Isles of Scilly, TR21 0LW or e-mail procurement@scilly.gov.uk if you have any doubt as to what is required or will have difficulty in providing the information requested. In his absence the email address will be checked by his colleagues to ensure that a swift response to any questions raised by tenderers is delivered.
- C.2 Tenderers should read these instructions carefully before completing the Tender documentation. Failure to comply with these requirements for completion and submission of the Tender Response may result in the rejection of the Tender. Tenderers are advised therefore to acquaint themselves fully with the extent and nature of the services and contractual obligations. These instructions constitute the Conditions of Tender. Participation in the tender process automatically signals that the Tenderer accepts these Conditions of Participation.
- C.3 All documentation issued in connection with this Invitation to Tender (ITT) shall remain the property of the Council and/or as applicable relevant Other Contracting Bodies (OCB) and shall be used only for the purpose of this procurement exercise. All Due Diligence Information shall be either returned to the Council or securely destroyed by the Tenderer (at the Council's option) at the conclusion of the procurement exercise.
- C.4 The Tenderer shall ensure that each and every sub-contractor, consortium member and adviser abides by the terms of these instructions and the Conditions of Tender.
- C.5 The Tenderer shall not make contact with any other employee, agent or consultant of the Council or any relevant OCB who are in any way connected with this procurement exercise during the period of this procurement exercise, unless instructed otherwise by the Council.
- C.6 The Council shall not be committed to any course of action as a result of:
- C.6.1 issuing this ITT or any invitation to participate in this procurement exercise;
 - C.6.2 an invitation to submit any Response in respect of this procurement exercise;
 - C.6.3 communicating with a Tenderer or a Tenderer's representatives or agents in respect of this procurement exercise; or
 - C.6.4 any other communication between the Council and/or any relevant OCB (whether directly or by its agents or representatives) and any other party.
- C.7 Tenderers shall accept and acknowledge that by issuing this ITT the Council shall not be bound to accept any Tender and reserves the right not to conclude an Agreement for some or all of the services for which Tenders are invited. Tenderers should be aware that no contractual relationship shall exist or be construed as existing between the Council and the successful tenderer until such time as the contract connected with this tender is duly executed and/or signed. Any works undertaken by the successful tenderer in the period between notification of award and the signing of the contract shall be considered as being at the tenderers risk.

- C.8 The Council reserves the right to amend, add to or withdraw all, or any part of this ITT at any time during the procurement exercise.

Confidentiality

- C.9 Subject to the exceptions referred to in paragraph C10, the contents of this ITT are being made available by the Council on condition that:
- C.9.1 Tenderers shall at all times treat the contents of the ITT and any related documents (together called the 'Information') as confidential, save in so far as they are already in the public domain;
 - C.9.2 Tenderers shall not disclose, copy, reproduce, distribute or pass any of the Information to any other person at any time or allow any of these things to happen;
 - C.9.3 Tenderers shall not use any of the Information for any purpose other than for the purposes of submitting (or deciding whether to submit) a Tender; and
 - C.9.4 Tenderers shall not undertake any publicity activity within any section of the media.
- C.10 Tenderers may disclose, distribute or pass any of the Information to the Tenderer's advisers, sub-contractors or to another person provided that either:
- C.10.1 This is done for the sole purpose of enabling a Tender to be submitted and the person receiving the Information undertakes in writing to keep the Information confidential on the same terms as if that person were the Tenderer; or
 - C.10.2 The Tenderer obtains the prior written consent of the Council in relation to such disclosure, distribution or passing of Information; or
 - C.10.3 The disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to the procurement or to any Contract arising from it; or
 - C.10.4 The Tenderer is legally required to make such a disclosure.
- C.11 In paragraphs C9 and C10 above the definition of 'person' includes but is not limited to any person, firm, body or association, corporate or incorporate.
- C.12 The Council may disclose detailed information relating to Tenders to its officers, employees, agents or advisers and the Council may make any of the Contract documents available for private inspection by its officers, employees, agents or advisers. The Council also reserves the right to disseminate information that is materially relevant to the procurement to all Tenderers, even if the information has only been requested by one Tenderer, subject to the duty to protect each Tenderer's commercial confidentiality in relation to its Tender (unless there is a requirement for disclosure under the Freedom of Information Act, as explained in paragraphs C13 to C16 below).
- C.12.1 The tenderer should be aware that the Council is required to disclose certain information relating to this procurement process in compliance with the Local

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of Scilly

Government Transparency Code 2015. This information will include, but may not be limited to, all payments to contractors for more than £500, details of any invitation to tender over £5,000 and any contract (regardless of whether this is a formal contract document or not) entered into by the Council over £5,000. This information will be declared on the Council of the Isles of Scilly website. For further information regarding the requirements of the Local Government Transparency Code 2015 tenderers are directed to:

<https://www.gov.uk/government/publications/local-government-transparency-code-2015>.

Freedom of Information

- C.13 In accordance with the obligations and duties placed upon public authorities by the Freedom of Information Act 2000 (the 'FoIA'), the Council may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the said Act, or the EIR be required to disclose information submitted by the Tenderer to the Council.
- C.14 In respect of any information submitted by a Tenderer that it considers to be commercially sensitive the Tenderer should:
- C.14.1 Clearly identify such information as commercially sensitive;
 - C.14.2 Explain the potential implications of disclosure of such information; and
 - C.14.3 Provide an estimate of the period of time during which the Tenderer believes that such information will remain commercially sensitive.
- C.15 Where a Tenderer identifies information as commercially sensitive, the Council will endeavour to maintain confidentiality. Tenderers should note, however, that, even where information is identified as commercially sensitive, the Council may be required to disclose such information in accordance with the FoIA or the Environmental Information Regulations. In particular, the Council is required to form an independent judgment concerning whether the information is exempt from disclosure under the FoIA or the EIR and whether the public interest favours disclosure or not. Accordingly, the Council cannot guarantee that any information marked 'confidential' or "commercially sensitive" will not be disclosed.
- C.16 Where a Tenderer receives a request for information under the FoIA or the EIR during the procurement process, this should be immediately passed on to the Council and the Tenderer should not attempt to answer the request without first consulting with the Council.

Tender Validity

- C.17 Your Tender should remain open for acceptance for a period of 90 days. A Tender valid for a shorter period may be rejected.

Timescales

- C.18 Set out below is the proposed procurement timetable. This is intended as a guide and whilst the Council does not intend to depart from the timetable it reserves the right to do so at any stage.

| | |
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| Date of Contract Notice sent/ITT Available | 07/01/2022 |
| Clarifications Period | 10/1/22 to 28/1/2022 |
| Tender Return Date/Time | 14/2/2022 @ 1630 |
| Tender Opening | |
| Evaluation Period start | 15/02/2022 |
| Date of Notification | 13/03/2022 |
| Standstill Period | 10 days |
| Earliest Date Contract Awarded | 28/03/2022 |
| Anticipated Contract Commencement: | 01/04/2022 |

**Anticipated Contract
Completion**

31/03/2025

Council's Contact Details

- C.19 Unless stated otherwise in these Instructions or in writing from the Council, all communications from Tenderers (including their sub-contractors, consortium members, consultants and advisers) during the period of this procurement exercise must be directed to the designated Council contact named in paragraph C.1 above.
- C.20 All communications should be clearly headed **Invitation to Tender for 2201S_Mainland waste** and include the name, contact details and position of the person making the communication.
- C.21 Requests for Tender clarifications must be submitted in accordance with the procedure set out in C51 to C57 – Queries Relating to Tender.

Expressions of Interest and Intention to Submit a Tender

- C.22 Tenderers should complete and return as soon as possible the Expression of Interest pro-forma included within the tender pack indicating their interest in the tender process. Where a tenderer does not submit an expression of interest and the Council is unaware of the intentions of an organisation with regard to the tender process, the Council accepts no responsibility for a tenderer being unaware of any clarifications, information releases or other changes to the tender process as a consequence of a failure to provide the required contact details. In addition to direct contact between the Council and parties that have expressed an interest, the Council will periodically update its website (www.scilly.gov.uk/business/contracts) with any information or changes to the procurement documents but it will remain the responsibility of tenderers to ensure that they have kept up to date with changes in the process. Expressions of Interest should be sent as soon as possible to procurement@scilly.gov.uk.
- C.23 Tenderers will be advised of the address of their SharePoint file folder for the receipt of tender documents.
- C.24 In the event that a Tenderer does not wish to participate further in this procurement exercise, the Tenderer should indicate such via email to procurement@scilly.gov.uk stating the reasons why they do not wish to participate further.

Preparation of Tender

- C.25 Tenderers must obtain for themselves at their own responsibility and expense all information necessary for the preparation of Tenders. Tenderers are solely responsible for the costs and expenses incurred in connection with the preparation and submission of their Tender and all other stages of the selection and evaluation process. Under no circumstances will the Council, or any of their advisers, be liable for any costs or expenses borne by Tenderers, sub-contractors, suppliers or advisers in this process.

- C.26 Tenderers are required to complete and provide all information required by the Council in accordance with the Conditions of Tender and the Invitation to Tender. Failure to comply with the Conditions and the Invitation to Tender may lead the Council to reject a Tender Response.
- C.27 The Council relies on Tenderers' own analysis and review of information provided. Consequently, Tenderers are solely responsible for obtaining the information which they consider necessary in order to make decisions regarding the content of their Tenders and to undertake any investigations they consider necessary in order to verify any information provided to them during the procurement process.
- C.28 Tenderers must form their own opinions, making such investigations and taking such advice (including professional advice) as is appropriate, regarding the services and their Tenders, without reliance upon any opinion or other information provided by the Council or their advisers and representatives. Tenderers should notify the Council promptly of any perceived ambiguity, inconsistency or omission in this ITT, any of its associated documents and/or any other information issued to them during the procurement process. Where tenderers fail to undertake investigations or fail to seek appropriate advice into their own proposed delivery model, the liability for any impacts will rest with the Tenderer.

Tenderers should, in developing their methodologies seek the advice, and where necessary, permissions of all relevant authorities with whom they intend to interact during the delivery of the project and ensure that all associated costs associated with any such permissions are included within their tender submission.

Submission of Tenders

- C.29 The Tender must be submitted in the form specified in the Instructions to Tenderers in Section D. Failure to do so may render the Response non-compliant and it may be rejected.
- C.30 The Council may at its own absolute discretion extend the closing date and the time for receipt of Tenders.
- C.31 Any extension granted will apply to all Tenderers.
- C.32 Tenderers must submit:
- C.32.1 **one original pdf priced** copy of their Tender
 - C.32.2 **one unpriced pdf copies** of their Tender (i.e. excluding the response to section D.5).
- C.33 The original and the copies must be provided on A4 paper, single line spaced, in Arial with a minimum size 11 font and signed by the Tenderer's authorised representative.
- C.34 In line with Government objectives to achieve ISO14001:2004 (Environmental Management Systems), the Council asks that you do not include any of the following with your Tender:
- C.34.1 Any extraneous information that has not been specifically requested in the ITT
 - C.34.2 Any sales literature

C.34.3 Any additional terms and conditions.

- C.35** In relation to the submission of electronic copies, Tenderers should note that they are **not permitted to email copies of the tender to the Council** and any emailed submissions will be deleted without consideration.
- C.35.1** Therefore, electronic copies must be **uploaded to your allocated SharePoint folder**
- C.36** The Tender and any documents accompanying it must be in the English language.
- C.37** Price and any financial data provided must be submitted in or converted into pounds sterling. Where official documents include financial data in a foreign currency, a sterling equivalent must be provided. The basis of any conversion from one currency to another must be clearly identified within the tender. This should include the exchange rate that has been used, the source of the exchange rate and the date on which the exchange rate was correct.
- C.38** It is recommended that the screenshots of the tender submission process are taken to validate the submission of tenders to SharePoint in the necessary timeframes. **Tenders are to be returned and received by the Council no later than 16:30 GMT on 14/2/2022.** Responses received after this date will not be accepted unless irrefutable proof is provided by the tenderer that the tender was uploaded in sufficient time
- C.39** Tenders delivered by hand will not be accepted
- C.40** Tenders will be received any time up to the deadline stated above. Tenders received before this deadline will be retained in a secure environment, unopened until the opening date.
- C.41** The Council does not accept responsibility for the premature opening or mishandling of Tenders that are not submitted in accordance with these instructions.
- C.42** Where applicable, account will also be taken of any factors which may impact on the Tenderers suitability that emerge from the tendering process and relate to information previously provided by the Tenderer as part of a pre-qualification process or information submitted as part of any qualitative selection process (including submitted European Single Procurement Documents documents). If the Tenderers circumstances have changed significantly from the position stated in the PQQ or ESPD this may lead to disqualification of the Tenderer from the Tender process.

Canvassing

- C.43** Any Tenderer who directly or indirectly canvasses any officer, member, employee, or agent of the Council or its members or any relevant OCB or any of its officers or members concerning the establishment of the Agreement or who directly or indirectly obtains or attempts to obtain information from any such officer, member, employee or agent or concerning any other Tenderer, Tender or proposed Tender or otherwise attempts to distort competition or seek an undue advantage in the procurement will be disqualified.

Disclaimers

- C.44 Whilst the information in this ITT, Due Diligence Information and supporting documents has been prepared in good faith, it does not purport to be comprehensive nor has it been independently verified.
- C.45 Neither the Council, nor any relevant OCBs nor their advisors, nor their respective directors, officers, members, partners, employees, other staff or agents:
- C.45.1 makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the ITT; or
 - C.45.2 accepts any responsibility for the information contained in the ITT or for their fairness, accuracy or completeness of that information nor shall any of them be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.
- C.46 Any persons considering making a decision to enter into contractual relationships with the Council and/or, as applicable, relevant OCB following receipt of the ITT should make their own investigations and their own independent assessment of the Council and/or, as applicable, relevant OCB and its requirements for the services and should seek their own professional financial and legal advice. For the avoidance of doubt the provision of clarification or further information in relation to the ITT or any other associated documents (including the Schedules) is only authorised to be provided following a query made in accordance with paragraph 16 of this Invitation to Tender.
- C.47 Any Agreement concluded as a result of this ITT shall be governed by English law, and enforceable under the exclusive jurisdiction of the English Court.

Collusive Behaviour

- C.48 Any Tenderer who:
- C.48.1 fixes or adjusts the amount of its Tender by or in accordance with any agreement or arrangement with any other party; or
 - C.48.2 communicates to any party other than the Council or, as applicable, relevant OCB the amount or approximate amount of its proposed Tender or information which would enable the amount or approximate amount to be calculated (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender or insurance or any necessary security); or
 - C.48.3 enters into any agreement or arrangement with any other party that such other party shall refrain from submitting a Tender; or
 - C.48.4 enters into any agreement or arrangement with any other party as to the amount of any Tender submitted; or
 - C.48.5 offers or agrees to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender, any act or omission,

C.48.6 Or colludes with any party with the objective of distorting the outcome of the tender process, shall (without prejudice to any other civil remedies available to the Council and without prejudice to any criminal liability which such conduct by a Tenderer may attract) be disqualified.

No Inducement or Incentive

C.49 The ITT is issued on the basis that nothing contained in it shall constitute an inducement or incentive nor shall have in any other way persuaded a Tenderer to submit a Tender or enter into the Agreement or any other contractual agreement.

Acceptance and Admission to the Agreement

C.50 The Tenderer in submitting the Tender undertakes that in the event of the Tender being accepted by the Council and the Council confirming in writing such acceptance to the Tenderer (notification of a successful tender), the Tenderer will within 30 days of being called upon to do so by the Council execute the Agreement in the form set out in Invitation to Tender pack or as amended in accordance with any clarifications requests accepted during the tender period by the Council which effect the Agreement. Tenderers are reminded that no contractual relationship shall exist as a consequence of the notification and that until such time as a formal contract has been entered into by both parties i.e. the contract is formally signed and/or executed, that any operations undertaken by the tenderer are at their own risk

C.51 The Council shall be under no obligation to accept the lowest or any Tender.

Queries Relating to Tender

C.52 All requests for clarification about the requirements or the process of this procurement exercise shall be made in accordance with paragraph C.53 of these Instructions.

C.53 The Council will endeavour to answer all questions as quickly as possible, but cannot guarantee a minimum response time. The Council has designated a specific window of time to deal with clarification requests from Tenderers.

C.54 Clarification requests can be submitted via e-mail to procurement@scilly.gov.uk from **10/1/2022 to 28/1/2022**

C.55 No further requests for clarifications will be accepted outside of the period referenced in the table at C18 or, where applicable, the date or time as amended and communicated to tenderers either by email or reissue of the ITT.

C.56 In order to ensure equal treatment of Tenderers, the Council intends to publish the questions and clarifications raised by Tenderers together with the Council's responses (but not the source of the questions) to all participants on a regular basis.

C.57 Tenderers should indicate if a query is of a commercially sensitive nature – where disclosure of such query and the answer would or would be likely to prejudice its commercial interests. However, if the Council at its sole discretion does not either; consider the query to be of a commercially confidential nature or one which all Tenderers would potentially benefit from seeing both the query and Council's response, the Council will:

- C.57.1 invite the Tenderer submitting the query to either declassify the query and allow the query along with the Council's response to be circulated to all Tenderers; or
 - C.57.2 request the Tenderer, if it still considers the query to be of a commercially confidential nature, to withdraw the query.
- C.58 The Council reserves the right not to respond to a request for clarification or to circulate such a request where it considers that the answer to that request would or would be likely to prejudice its commercial interests. The Council does not guarantee that the submission of a clarification question will result in an answer being provided by it within the timescales of the tender but will in every case use its best endeavours to do so.

Amendments to Tender Documents

- C.59 At any time prior to the deadline for the receipt of Tenders, the Council may modify the ITT by amendment. Any such amendment will be numbered and dated and issued by the Council to all prospective Tenderers by 02/03/2021. In order to give prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, the Council may, at its discretion, extend the Deadline for receipt of Tenders.

Late Tenders

- C.60 Any Tender received at the designated point after 16:30 GMT on 19/3/2021 will be rejected unless the Tenderer can provide irrefutable evidence that the Tender was capable of being received by the due date and time.

Proposed Amendments to the Agreement by the Tenderer

- C.60 The contract issued with this Tender Pack should be considered in detail by Tenderers as part of submitting their tender. Tenderers wishing to clarify the terms and conditions of the contract may do so by issuing a clarification request as set out in paragraph C 52 through C.58.
- C.61 The Council will consider proposed amendments strictly on their merits and within the limits imposed by Public Procurement Law and shall, in accordance with duties of transparency, fair competition and equal treatment of all tenderers, openly communicate any requested changes of the contractual documents that may have a bearing on other Tenderers approach to tendering for the contract. For the avoidance of doubt any request of this nature shall be treated as any other clarification request.
- C.62 Tenderers should communicate to the Council, when submitting any such change, whether or not the request is of a commercially confidential nature. As per paragraph C57 the Council will exercise sole discretion in this matter
- C.63 Only changes that have been requested and agreed within the clarifications process and its timescales shall be included within the contract issued at the conclusion of the tender process. Tenderers should note that the Council will automatically reject any requests which changes the nature of the contract in the favour of a particular tenderer and that any terms and conditions, however included in the tenderer's submissions,

Invitation to Tender for the transfer and final disposal of waste and recycling arising from the Council of the Isles of Scilly

will be automatically rejected where these have not been agreed by the Council in accordance with the clarification process.

Modification and Withdrawal

- C.64 Tenderers may modify their Tender prior to the Deadline by giving notice to the Council in writing to: Keith Grossett, Senior Officer: Capital Development and Procurement, Council of the Isles of Scilly, Town Hall, St Mary's, Isles of Scilly, TR21 0LW. No Tender may be modified after the Deadline for receipt.
- C.65 The modification notice must state clearly which element of the tender requires modification, the current text or numerical information that is to be amended and the words or numerical information to be inserted in their place. The modification notice should clearly specify how the Council should interpret and implement the modification and must be submitted in accordance with the provisions of paragraph C36 and C37.
- C.66 Tenderers may withdraw their Tender at any time prior to the Deadline or any other time prior to accepting the offer of a contract. The notice to withdraw the Tender must be in writing and sent to the Council by email to procurment@scilly.gov.uk.

Right to Reject/Disqualify

- C.67 The Council reserves the right to reject or disqualify a Tenderer where:
 - C.67.1 the Tenderer fails to comply fully with the requirements of this Invitation to Tender or is guilty of a serious misrepresentation in supplying any information required in this document; or expression of interest; and/or
 - C.67.2 the Tenderer is guilty of serious misrepresentation in relation to its Tender; expression of interest and/or the Tender process; and/or
 - C.67.3 there is a change in identity, control, financial standing or other factor impacting on the selection and/or evaluation process affecting the Tenderer.
 - C.67.4 The tenderer fails to meet the selection criteria, including the mandatory exclusion criteria or the discretionary criteria, and is unable to "self-clean" to the satisfaction of the Council.

Right to Cancel, Clarify or Vary the Process

- C.68 The Council reserves the right to:
 - C.68.1 amend the terms and conditions of the Invitation to Tender process,
 - C.68.2 cancel the evaluation process at any stage; and/or
 - C.68.3 require the Tenderer to clarify its Tender in writing and/or provide additional information. (Failure to respond adequately may result in the Tenderer not being selected).

Customer References

- C.69 The Council may visit at least one customer reference site of the Tenderer and may seek written references from any other designated customers which are not visited.

Advertised at:

Contract Finder - <https://www.find-tender.service.gov.uk/Search>

CloS - <http://www.scilly.gov.uk/business-licensing/contracts/current-contract-opportunities>

Notification of Award, Standstill and Contracting

- C.70 The Council will notify all of the Tenderers of its intention to award of the contract. This notification will be formatted in same way as that identified in Regulation 86 of the Public Contract Regulations 2015 and shall be issued via email.
- C.71 Tenderers should note that a stand still period applies to this tender as it is over threshold.
- C.72 Not Used
- C.73 Upon notification, the Council shall commence discussions with the successful tenderer with a view to setting an inception meeting, completing the contracting process and commencing delivery of the contract.

Section D: Response, Submission and Evaluation

Required Response Format

This section sets out the required structure of the Tender. There are no specific word limits, however Tenderers should ensure that responses are relevant and proportionate to the questions being addressed. Further details of the scope is available in ***Section E: The Scope of Service***.

Decisions on the appointment of a provider will be undertaken on the basis of the most economically advantageous tender.

Please Return

Tenderers are required to return with their submission:

- **A completed version of Appendix A: Standard Selection Questionnaire**
- **A response to each of the D1 to D5 Award Criteria**

D.1 An **Executive Summary** – highlighting the key elements of the proposed approach and commercial matters. (0%) Please limit to 2 sides of A4.

D.2 **Methodology (25%)**

D.2.1 The Council needs to understand the potential providers approach to delivering the contract and readiness of the proposed approach to deliver the requirements at or close to the point of award.

Tenderers should outline their methodology for delivering the contract to which their tender relates, this should include:

D.2.1.1 (15%) An overview of the providers proposed methodology in response to the contract requirements set out in Section E - Scope of Service, including but not limited to; (Max 1 side of A4 per heading).

- Duty of Care & UK waste legislation
- How the Contractor is minimising their own carbon emissions (including a copy of their carbon reduction or environmental policy)
- How the contractor will assist the Council in reaching their 2030 zero carbon goal
- Residual waste
- Dry Mixed & Segregated Recycling
- Flat glass, Asbestos & Plasterboard & Hazardous Waste disposal
- Food waste
- Containerisation
- Collection & Transportation of waste
- Waste documentation and waste tracking processes
- Sub-contracting (if required)
- Major incidents
- Contingency plans

Advertised at:

Contract Finder - <https://www.find-tender.service.gov.uk/Search>

CloS - <http://www.scilly.gov.uk/business-licensing/contracts/current-contract-opportunities>

- Contract Management and Key Performance Indicators
- Innovation

D.2.1.2 (10%) A table identifying any permissions, decisions, agreements or other dependencies with your supply chain more generally or third party stakeholders that will need to be/have been addressed to allow your methodology to be delivered. The response should;

- Describe the issue,
- Identify the nature of any decisions required (e.g. are they internal or external decisions, access related, statutory/legal, commercial, operational, none etc),
- Identify the parties involved
- State the current progress of any decision process (e.g. none, no progress, early discussions, advanced discussions, agreed)
- the importance of resolving the issue i.e. what would the consequence be if it were not resolved.
- Any alternative options or mitigations you are considering for resolving the issue.

Scoring Methodology: The tender submissions will be assessed using the scoring methodology below.

| Assessment | Score |
|--|-------|
| Very Poor – Submission fails to demonstrate the required understanding/knowledge/information requested | 1 |
| Poor – Submission provides limited evidence of meeting the projects objectives, aims or the requirements of the Council. | 2 |
| Satisfactory – Submission demonstrates an adequate understanding of the project and/or the requirements of the Council | 3 |
| Good – Submission demonstrates considerable evidence of meeting or exceeding the project objectives, aims or requirements of the Council. | 4 |
| Very Good – Submission demonstrates clear evidence of significantly exceeding the project objectives, aims or requirements of the Council | 5 |

D.3 Health, Safety and the Environment (10%)

Tenderers should outline the potential health, safety and environmental implications or concerns that they can foresee in delivering the contract. The Health, Safety and Environment considerations should be linked to the proposed approach to delivering the contract in D.2.1 above. Reference should be made to any requirements that legislation or regulation may place upon the contractor with regard to health, safety and the environment such as mandatory processes or procedures.

Scoring Methodology:

The tender submissions will be assessed using the scoring methodology below. If a tender submission receives a fail then the tender will not be considered further and will be rejected on the ground that the appointment would present too great a risk to the delivery of the contract.

| Assessment | Score |
|--|-------|
| Very Poor – Submission fails to demonstrate the required understanding/knowledge/information requested | 1 |
| Poor – Submission provides limited evidence of meeting the projects objectives, aims or the requirements of the Council. | 2 |
| Satisfactory – Submission demonstrates an adequate understanding of the project and/or the requirements of the Council | 3 |
| Good – Submission demonstrates considerable evidence of meeting or exceeding the project objectives, aims or requirements of the Council. | 4 |
| Very Good – Submission demonstrates clear evidence of significantly exceeding the project objectives, aims or requirements of the Council | 5 |

D.4 Risk Register (5%)

Tenderers should prepare a project specific risk register considering potential risks to the successful delivery of the contract including the likelihood of the risks arising, the impacts, risk reduction measures and the parties responsible for the risks.

Scoring Methodology:

The tender submissions will be assessed using the scoring methodology below

| Assessment | Score |
|--|-------|
| Very Poor – Submission fails to demonstrate the required understanding/knowledge/information requested | 1 |
| Poor – Submission provides limited evidence of meeting the projects objectives, aims or the requirements of the Council. | 2 |
| Satisfactory – Submission demonstrates an adequate understanding of the project and/or the requirements of the Council | 3 |
| Good – Submission demonstrates considerable evidence of meeting or exceeding the project objectives, aims or requirements of the Council. | 4 |

D.5 Price (60%)

D.5.1 Tenderers should complete the following tables showing their per/tonne or Per/container and a fixed price that they wish to tender for. This price should include all expenses, but exclude VAT.

The pricing should consider the estimated volumes identified within the Scope of Service

Tenderers are expected to have used their competencies and skills as a diligent waste contractor in arriving at their price submission and should undertake all necessary due diligence in arriving at a price that includes all the relevant activities for the successful delivery of the contract.

Scoring Methodology:

The Council will evaluate the Total Price (bottom box in each of the above tables) of each provider to determine the Price scores. The Council uses a graduated mean weighted average system in determining the relative scores awarded. This process is conducted through a spreadsheet formula which operates as follows:

- All tenderers Price submissions are summed and a mean average price is established.
- The mean average price constitutes the value at which 50% of the available score for price is met. For example, if the mean average of all the prices was £150,000 any individual submission equalling this value would achieve 50% of the Price weighting (in this tender 60%). In this example the score awarded to such a submission would be 30% (50% of a total of 60 = 30%)
- The formula identifies tenderers proximity to this 50% benchmark value and awards, on a graduated basis, relatively higher marks for those submission whose price is lower than this benchmark (reflecting better price offered to the Council) and relatively lower marks for those submissions whose price is higher than this benchmark.
- Mathematically the process used can be expressed as
 - Mean Average/Price submission *0.5
 - As an example, two tenders are received and the prices of these tenders are £100,000 and £200,000. This generates a mean average of £150,000. The calculation is applied to the price submission with the following result:
 - Tender 1 - $150,000/100,000 * 0.5 = 0.75$
 - Tender 2 – $150,000/200,000 * 0.5 = 0.375$
 - The values generated for Tenders 1 and 2 (0.75 and 0.375) are then applied to the overall Price weighting for this section (in this tender 60%) to generate the final price scores for the respective tenders. This can be expressed mathematically as:

- Tender 1 – $60\% \times 0.75 = 45\%$
- Tender 2 – $60\% \times 0.375 = 22.5\%$

- For clarity, the final Price score for Tender 1 and 2 are respectively 45% and 22.5%.

D.5.2 Tenderers should set out any assumptions that they have made in arriving at their fixed price taking into account their due diligence information and industry knowledge. Where these assumptions are capable of being clarified by the Council within the tender process a clarification request should be made in accordance with the clarification process outlined at C 52 – C 58. Where any assumptions listed in response to this item could have been clarified by the tenderers supply chain or by other third parties on which the tenderer may be reliant, the Council will have expected the tenderer to have clarified these assumptions, in so far as is reasonably possible, as part of the tenderers due diligence. In responding to this item tenderers should:

D.5.2.1 State the assumption

D.5.2.2 Quantify the impacts of the failure of the tenderers assumption on the performance, cost and programme of the contract. (If any)

D.5.2.3 Identify any measures that can be undertaken to mitigate these impacts

D.5.2.4 State the likelihood of the failure of the assumption the Council shall accept no responsibility for any activities that are reasonably foreseeable by a diligent contractor.

D.5.3 Tenderers should set out any items that they have specifically excluded from the costs provided in response to D 5.1. The Council expects the contractor to have used due diligence, its skills as a waste contractor and best judgement in deciding to exclude these items. Therefore, the Council does not expect items that are intrinsically required to deliver the tenderers methodology to be included in the tenderers exclusions and the likelihood of the tenderer drawing on these items should be low.

D.5.4 Assumptions or the exclusions included by a tenderer should not be used to introduce terms and conditions to the contract. Any terms and conditions introduced in this section that have not been agreed following a clarification request will be ignored by the Council. Contractually this clause shall have the effect that the tenderers submission will be taken as submitted but as if without any terms and conditions inserted by the Tenderer unless otherwise agreed through the clarification process. Genuine assumptions and exclusions shall be noted by the Council.

D.5.5 Tenderers should note that the Public Contract Regulations impose strict restrictions on the tendering of above threshold contracts and that the Council cannot negotiate with contractors when using the Open Procedure. Furthermore, modifications of the contract post award are limited to those allowable under Regulation 72 of the PCR 2015.

Documents to Complete and Sign

- D.6 In addition to providing written responses to sections D1 to D5, the following documents need to be completed and signed.

Annex D: Expression of Interest Form - **Please return during the tender process to enable the Council to update you as required.**

Annex A – Standard Selection Questionnaire – **To be returned with tender response**

Annex C-Certificate of bona fide tender, - **to be returned with tender response**

Submission of Tenders

- D.7 Date for return of tenders:

16:30 GMT on 14/2/2022

- D.8 Tenderers must submit:
- one original bound **priced** pdf copy of their Tender
 - one **unpriced** pdf copy of their Tender; and
- D.9 The original and the copies must be provided as A4, single space, in Arial with a minimum size 11 font pdf documents, signed by the Tenderer's authorised representative.
- D.10 Tenderers may include a covering letter with their tender but this should not introduce any caveats or terms that change the offer as articulated in their tender response.
- D.11 Appendices may be included within your tender submission for relevant information relating to the tender response requirements. Where these appendices form part of the response to one of the above quality or price award criteria the appendices should be referenced in the response to each criteria to which they relate. Evaluators cannot assume a relationship between the response provided and an appendix and therefore where appendices are included but are not referenced in the text these may not be considered in the manner foreseen by the Tenderer.
- D.12 Unsolicited materials, for example flyers, general marketing and company literature, that do not specifically relate to the award criteria response should not be included. Unsolicited items will not be considered at all by evaluators.
- D.13 Tenderers general terms and conditions should not be included and will be rejected.
- D.14 The mechanics of Tender submission are set out in paragraphs C.28 to C.41.

Evaluation of Tenders

- D.15 The Tender process will be conducted to ensure that Tenders are evaluated fairly to ascertain the most economically advantageous tender.

- D.16 Following the closing date for receipt of tender, the Council will evaluate all the tenders. A decision on the appointment is expected to be made to all tenderers on **13/3/2022**
- D.17 The successful tenderer(s) will be selected on the basis of the most economically advantageous proposal, having regard to the evaluation criteria specified in this ITT. The Council shall not be bound to accept any proposal received or to award any contract pursuant to this Invitation to Tender.
- D.18 Tenders will be evaluated by applying a weighting of:
40% in respect of the evaluation for quality (made up of the sub-criteria identified at D1 to D4);
60% in respect of the evaluation for price (made up of the sub criteria at D 5.1)
- D.19 The sub-criteria and weightings in respect of the evaluation of the services are outlined in D1-D5.
- D.20 A Tenderer(s) will be awarded a Contract, who, in the opinion of the Council at the conclusion of the evaluation, offers the Most Economically Advantageous Tender to the Council having regard to the total score of the award criteria set out in D1-D5 i.e. the summed total of the scores for all the award criteria/sub-criteria. Prior to awarding the contract the Council shall undertake checks on the selection phase information (Annex A: Standard Selection Questionnaire) to ensure that there are no reasons why this contract should not be awarded to the Tenderer(s). Supplementary information including the "means of proof" may be requested to ensure that the statements made are accurate. Where required "self-cleaning" information may be requested from the tenderers in question.
- D.21 If a tenderer fails the selection phase requirements, including being unable to adequately "self-clean", the Council will be unable to award the contract to that contractor and they will be deselected from the tender evaluation process. In terms of the effect of this situation on the evaluation process, the evaluation process would appear as if the Tenderer had never submitted a tender and the Council would seek to award the contract to the Tenderer which then presents as offering the Most Economically Advantageous Tender.

Evaluation Process

- D.22 The evaluation process will feature some, if not all, the following phases:

| TABLE 2: EVALUATION PROCESS | |
|-----------------------------|--|
| Phase 1 | Independent Evaluation of Tender Responses |
| Phase 2 | Moderation of Scores and Consensus Scores based on the mean average of the Independent Evaluations |
| Phase 3 | Identification of the Most Economically Advantageous Tender |

| | |
|--|---|
| Phase 4 | Verification of the Selection Phase Response – Appendix A: Standard Selection Questionnaire (Successful Tenderer(s) only) |
| Repetition of Phase 3 and 4 in the event of de-selection | |
| Phase 5 | Notification of Successful and Unsuccessful Tenderers |

Award of Contract

- D.23 The Council will inform all Tenderers in writing via email of its decision to award the contract/Lots.
- D.24 All Tenderers will be provided with the following information (in so far as it applies to their tender):
- the criteria for the award of the contract (D1 – D5 above);
 - the reason for the decision, including the characteristics and relative advantages of the successful tender, the score (if any) obtained by -
 - the Tenderer in receipt of the notice;
 - the Tenderer to be awarded the contract
 - a precise statement of either
 - when the standstill period is expected to end and how the timing of its ending may be affected by any and what contingencies, or
 - the date before which the Council will not, in conformity with Regulation 87 enter into the contract

Section E: The Scope of Service

- E.1 The Council is seeking a contractor to deliver a 3-year waste management service for the collection (from Penzance Quay), transfer and final disposal of waste and recycling streams generated on the Isles of Scilly, and the return of empty containers to Penzance to ensure a continuous service.
- E.2 It is estimated that there will be approximately 3000 tonnes of total waste and recycling over a three-year period
- I. Residual Waste
 - II. Dry Mixed & Segregated Recycling
 - III. Flat glass
 - IV. Plasterboard
 - V. Asbestos
 - VI. Hazardous waste (paints, chemicals, oils, oily waste etc)
 - VII. Food (This is not part of this contract, however an estimated quote and proposed methodology is requested for information)
- E.3 Waste Service Contractors will also provide a service which is capable of reacting to any ad hoc situation as they arise:
- VIII. Ad Hoc Waste Service requests
 - IX. Major Incident, Emergency and Disaster support in line with policies and procedures

Compliance & Management

- E.4 The Contractor will be required to;
- i. Meet all statutory and legal requirements relevant to the disposal of waste;
 - ii. Adhere to the Council's standards for waste disposal and provide the required services to the satisfaction of the Council.
 - iii. Provide a cost effective and efficient Waste Management Service
 - iv. Ensure that the operation of the Council is not interrupted due to any failings in the removal of waste
 - v. Demonstrate compliance with Public Services (Social Value) Act 2012;

Duty of Care

- E.5 The Contractor must ensure compliance through the implementation of up-to-date policies to ensure compliance with waste regulation. This covers activities such as day to day operations for example waste acceptance and transport.
- E.6 To ensure that the Council's Duty of Care in respect of waste is adequately discharged, Contractors are required to:

- I. Provide comprehensive written documentation relating to all aspects of the contract
 - II. Provide a fully detailed audit trail relating to the collection of all waste streams
 - III. Provide details of weighbridge facilities and waste tracking processes
 - IV. Produce a complete Risk Register which covers all the requirements of the Environmental Protection Act 1990 and Hazardous Waste Regulations 2005, including Code of Practice on Duty of Care, COSHH and the requirements of the Health and Safety at Work Act. This must include formal Risk Assessment documentation and details of measures taken to monitor and review.
- E.7 Contractors are requested to provide a 'Duty of Care' report for the Council that they propose to use during the execution of this contract either frequently or on an ad hoc basis. Reports provided must be no older than 12 months old.
- E.8 Adherence to Duty of Care principles will be a continuing process throughout the duration of the contract. The Council reserve the right to monitor the waste through all stages of disposal. This is to ensure that no divergence from specification or instances of unacceptable working practice occurs and is in accordance with the Council's Duty of Care requirements. Part of the monitoring process will require access to the disposal facilities during the provision of the service. This action shall in no way absolve Contractors from their legally defined responsibilities under this contract as designated by statutory legislation.
- E.9 The Council reserves the right to visit the specified site(s) in accordance with its "Duty of Care" responsibilities under the Environmental Protection Act 1990. The Council may undertake periodic audits and visits of Contractor's facilities, particularly the later stage segregation and final destinations of their waste. This will allow service providers to demonstrate that steps have been taken to prevent the illegal treatment of waste and to ensure that there is an auditable trail covering the collection, recycling, transfer, disposal or incineration of the Council's waste as per the requirements of the contract. The full process must be open for inspection by the Council if so required.
- E.10 The Council must be advised of the locations of the proposed waste disposal sites/facilities and/or transfer stations. Any subsequent changes during the contract period must be notified in writing in advance to the Council. Prior notification must be received at least one month before the alternative site/facility is utilised.

Minimising Carbon and Environmental Impact

- E.11 The contractor must assist the Council in reducing the carbon emissions from waste (including disposal and transportation) and actively demonstrate reductions in these emissions.
- E.12 The contractor must actively embrace new technology and solutions that deliver new/innovative waste solutions improving compliance/reducing costs/reducing carbon emissions.

- E.13 Contractors must provide a copy of their Carbon Reduction, Environmental or Sustainability Policy, outlining mechanisms for ensuring that processes in place are sustainable and designed to reduce Environmental, Economic and Social impact.
- E.14 Contractors must provide details on what steps their organisation has taken, or is intending to take, to reduce CO₂ emissions per tonne.
- E.15 Contractors must ensure that they manage their environmental impact for the delivery of this contract. This may be through the accreditation to an Environmental Management System, or any other system which is particularly relevant to the vehicles used, journey planning, energy consumption, carbon emissions and any other relevant environmental factors. Ask them to confirm which professional bodies they are members of (e.g. CIWM)
- E.16 Contractors must monitor data and report data on a monthly basis (see Contract Management and Key Performance Indicators).
- E.17 Contractors must reply to any other requests relating to legal compliance and/or environmental performance within 48 hours.
- E.18 Contractors will support the delivery of the Council's Net Zero Carbon by 2030 corporate ambition.

Residual Waste (blended black bag and shredded bulky waste)

- E.19 The Council requires a contractor to undertake the collection (from Penzance Quay), transfer and final disposal of residual waste (blended black bag and shredded bulky waste) in 14-yard compactor skips to a local to energy recovery plant, and the return of the empty compactor skip to Penzance Quay.
- E.20 The Council requires the contractor to undertake twice annual composition analysis to better understand the composition of the residual waste, in order to target better segregation and the forthcoming food waste segregation. Composition analysis is included within the cost of the contract.

Recycling (Dry Mixed & Segregated)

- E.21 The Council requires the contractor to undertake the collection (from Penzance quay), transfer and onward processing of dry mixed and segregated recycling to a local facility (where possible).
- E.22 The Council seeks to move towards segregated recycling streams in line with the Government's statutory guidance following the consistency of collections consultation response due in 2022.

- E.23 All Tenderers are required to provide a proposal within their tender submission that sets out how the Council can move towards segregated recycling in line with the Government's consistency of collections regime. A key aim for successful Contractors will be their ability to develop existing recycling activity as well as proposals to increase the recycling activity.
- E.24 The Council requires the contractor to undertake twice annual composition analysis of the dry mixed recycling to better understand the composition of recycling being generated from the islands in order to target better segregation of recyclates. This is included within the cost of the contract.

Flat Glass

- E.25 The Council requires the Contractor to undertake the collection (from Penzance Quay), transfer and final disposal of flat glass in 8yard skips for onward recycling at a local facility (where possible) and the return of the empty skip to Penzance Quay.

Asbestos

- E.26 The Council requires the Contractor to undertake the collection (from Penzance Quay), transfer and final disposal of asbestos in 8-yard enclosed secure skips for onward disposal, and the return of the empty skip to Penzance Quay.

Plasterboard

- E.27 The Council requires the Contractor to undertake the collection (from Penzance Quay), transfer and final disposal of plasterboard in 8-yard secure skips from for onward disposal, and the return of the empty skip to Penzance Quay.

Hazardous Waste (paints, chemicals, oils, oily waste)

- E.28 The Council requires the Contractor to undertake the collection, transfer and final disposal of hazardous wastes in secure containerisation for onward disposal, and the return of the empty container to Penzance Quay

Food Waste

- E.29 The Council does not currently collect food waste on the Isles of Scilly. The Council is currently reviewing how it can meet the Government's requirement for food waste collection and treatment by 2023.
- E.30 This contract tendering process requires the Contractor to provide an estimated quote for information for the collection, transfer and final disposal of food waste to anaerobic digestion on the UK mainland.
- E.31 It should be noted, the collection, transfer and disposal to anaerobic digestion is not part of this contract, it is for information only to enable the Council to assess its

Invitation to Tender for the transfer and final disposal of waste and recycling arising from the Council of the Isles of Scilly
options around food waste collection and treatment on the Isles of Scilly from 2023 onwards. This will not be taken into account as part of the tender evaluation.

- E.32 A separate food waste contract will be issued if anaerobic digestion on the mainland is deemed to be the preferred option.

Containerisation

- E.33 Contractors will be required to provide appropriate containers for the safe storage, marine haulage and transfer of all waste streams, with the exception of residual waste, for which the Council has its own set of compactor skips.
- E.34 The container size and dimensions used for the current transfer of waste and recycling have been agreed and contracted with the waste haulage contractor, the Isles of Scilly Steamship Group.
- E.35 Any changes to the size and dimensions of the waste and recycling containers must be agreed with the Council and the waste haulage contractor. This is to ensure the containers are able to be hauled on the Isles of Scilly via road, and also meet the requirements on board the current cargo vessel the Gry Maritha and the new cargo vessel (due for completion 2024/25) which supports the marine haulage transfer of waste.
- E.36 Containers that become unsuitable for continued use through wear, loss or any other reasonable reason shall be withdrawn immediately from service and replaced as necessary at the Contractors' expense.
- E.37 Containers will be of suitable capacity and designed to prevent leakage or spillage.
- E.38 Contractors will be required to provide containers in excess of normal requirements to accommodate any emergency overflow of waste as a result of a Major Incident.
- E.39 The current containerisation requirements are listed below.

| Waste stream | Containerisation | Provision of container within the contract | Return to Penzance |
|--|--|--|--------------------|
| Residual Waste | 14yd compactor skips Dimensions (approx.): (L) 3700mm x (W) 1900 mm x (H) 2300mm Max Laden Weight: 8.5 tonnes Estimated Tare Weight: 1.5kg | No | Yes |
| Recycling (dry mixed / segregated) | Baled, wrapped and palletised Dimensions (approx.): (L) x 1600mm (W) 1300mm x (H) 1800mm Max Laden Weight: 1 tonne Estimated Tare Weight: (N/A) No return | N/A | No |

| | | | |
|---|---|------------|------------|
| Flat glass | 8yd enclosed skips Dimensions (approx.): (L) 3300mm x (W) 1900 mm x (H) 1700mm Max Laden Weight: 3 tonnes Estimated Tare Weight: 500kg | Yes | Yes |
| Asbestos | 8yd enclosed skips Dimensions (approx.): (L) 3300mm x (W) 1900 mm x (H) 1700mm Max Laden Weight: 3 tonnes Estimated Tare Weight: 500kg | Yes | Yes |
| Plasterboard | 8yd enclosed skips Dimensions (approx.): (L) 3300mm x (W) 1900 mm x (H) 1700mm Max Laden Weight: 3 tonnes Estimated Tare Weight: 500kg | Yes | Yes |
| Hazardous Waste (paints, chemicals, waste oil, oily waste, etc) | Containerisation: (TBC by contractor) | Yes | Yes |
| Food waste | Containerisation: (TBC by contractor) | Yes | Yes |

- E.40 Contractors must ensure that there are an adequate number of empty waste containers including the Council's own residual waste compactor skips, plus other waste containers to satisfy both the Council's waste service, but also to meet the requirements of the Environment Agency Permit for the secure storage of waste on the islands. The Council Requires at least 4 residual waste compactor skips on the islands at any one time.
- E.41 All containers provided by the contractor are included within the cost of the contract.

Marine Haulage & Collection Schedule

- E.42 Contractors shall collect laden waste and recycling containers and return empty containers on an agreed Schedule from Penzance Quay in consultation with the Isles of Scilly Steamship Group.
- E.43 Waste will be delivered by the Isles of Scilly Steamship Group to the agreed collection point on Penzance Quay in accordance with the schedule provided agreed at the start of the contract.
- E.44 The contractor will be required to collect and transport the containerised materials, in accordance with current mainland UK waste regulations and with all necessary

Invitation to Tender for the transfer and final disposal of waste and recycling arising from the Council of the Isles of Scilly
waste carriers' licences to a suitable licensed facility for final disposal, recovery or treatment.

- E.45 The marine haulage schedule is subject to seasonal waste variation, tide and shipping times.
- E.46 The volume of residual waste generated per week is subject to significant seasonal variation.
- E.47 Contractors must ensure that all replacement empty containers are functional and safe for use as per relevant legislation prior to their return to the Isles of Scilly
- E.48 Each Tenderer shall identify a sufficient number of containers to be supplied, subject to the agreement of the Council' prior to the commencement of the contract.
- E.49 Contractors must provide itemised details of costs and tonnages for the disposal of all waste streams.
- E.50 Where Contractors use sub-contractors/third parties to manage waste streams on behalf of the Council the Contractors are responsible for managing and co-ordinating all invoicing and billing activities as well as the provision of data
- E.51 Variations in service requirements (including additional or reduced collections) will be notified to Contractors as and when required and will be confirmed in writing.
- E.52 Contractors will be required to nominate a competent person(s) who can be contacted in the event of an emergency. An out of hours phone number will be required to ensure that the Contractor can be contacted 24 hours a day.
- E.53 The Council will supply Contractors with similar out of hours contact name(s) for each of the sites to be serviced under the contract.

Transportation of Waste

- E.54 All vehicles used for providing waste collection and disposal services are to be roadworthy in accordance with the Road Traffic Acts and, as appropriate, be properly licensed by the relevant Council and, where appropriate, be of a type that conforms to current Motor Vehicle Regulations (i.e. Motor Vehicles (Construction and Use) Regulations, the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2011 etc.) and future regulations during the course of the contract.
- E.55 Vehicles must be maintained to a high standard of reliability and roadworthiness and will be subject to inspection at any reasonable time. As a result of said inspections Council may instruct Contractors not to use the aforementioned vehicles in the provision of the waste collection and disposal services - these instructions cannot be unreasonable or vexatious. All vehicles used must conform to the Motor Vehicles (Construction and Use) Regulations.

- E.56 Contractors will be required to demonstrate that they can provide adequate cover for the non-availability of scheduled vehicles or drivers.
- E.57 The vehicles used must at all times, at the expense of Contractors, be appropriately licensed and insured.
- E.58 Contractors must provide evidence of insurance and breakdown cover for all vehicles to the Council's representative(s) upon request.
- E.59 Contractors must provide evidence to the relevant Council of current registration as a waste carrier for the transportation and disposal of waste.
- E.60 Documentary proof of registration shall be required at Contract Award.
- E.61 Contractors shall be totally responsible for the construction, security and roadworthiness of the vehicles used.
- E.62 Should the vehicle be involved in an accident, however minor, the relevant Contractor must complete an Accident Report Form and submit it to the relevant Council's Authorised Officer.
- E.63 Contractors shall be responsible in the event of any Road Traffic Accident for clearance of any spillage whether it is deemed their fault or not.
- E.64 The routes used by Contractors to deliver services under the contract are at their discretion but must be capable of supporting said delivery to Council and sites as per the agreed schedule.
- E.65 Contractors are required to take efficient measures to reduce the environmental impact of their transportation activities such as waste vehicle specification, journey planning, etc.
- E.66 If, for any reason, Contractors need to use disposal facilities other than the ones defined under this contract, Contractors must gain written approval from the relevant Council; any costs associated with this activity will be borne by the Contractor.
- E.67 The staff responsible for driving and operating the vehicles used in the delivery of services under this contract must be appropriately trained.

Waste Documentation

- E.68 All Non-Hazardous waste collected will be covered by a Controlled Waste Transfer Note in accordance with the Waste (England and Wales) Regulations 2011.

- E.69 All Hazardous waste collected will be covered by a Hazardous Waste Consignment Note and in accordance with the Environmental Protection Act 1990 and the Hazardous Waste (England and Wales) Regulations 2005 (as amended).
- E.70 All Controlled Waste Transfer Notes and Hazardous Waste Consignment Notes must be signed by the Contractor on behalf of the Council and be in full compliance with the Waste (England and Wales) Regulations 2011 and Hazardous Waste Regulations 2005 (as amended) respectively before waste is removed from Penzance Quay.
- E.71 Contractors will provide electronic collection notes recording the time and date of collection, the identification of waste collected, the registration number of the collection vehicle and the final destination of the waste.
- E.72 After the delivery of each load the operator of the waste treatment facility shall issue to the Contractor an electronic receipt recording the time, date and disposal method/point of the load and the weight of the individual containers. A copy of the previous month's receipts must be forwarded together with the monthly invoices to the relevant Council representative.
- E.73 After the final disposal of the waste the contractor must complete Part E of the Hazardous Waste Consignment Note in full compliance with the Hazardous Waste Regulations 2005 (as amended) and provide quarterly returns to the relevant Council.
- E.74 The Contractor will put in place a system of tracking and auditing waste movements which is acceptable to and easily monitored by the Council. This system which may be by bar coding or a numbered system must be maintained by the Contractor.
- E.75 It should permit the identification and monitoring of all waste from St Marys, to the carrier's vehicle and through to the waste disposal site. The information from this system should be provided on a monthly basis to the Council and be cross-referenced with the Consignment Notes and Waste Transfer Notes.
- E.76 All waste documentation is included within the cost of the contract.

Disposal of Hazardous Waste

- E.77 Contractors must provide the Council with the full name and address of the sites/facilities where all Hazardous waste will be disposed of/treated.
- E.78 Contractors must also provide written confirmation that any designated waste disposal plant/facility or standby facilities named within their tender proposal are permitted/authorised by the Environment Agency/Local Council to receive Hazardous waste from the Council.
- E.79 Contractors must provide copies of licenses, consents, environmental permits and exemptions of any disposal/treatment sites that are proposed for use to service this contract.

- E.80 If Contractors wish to utilise alternative sites/facilities the Council must be notified in writing. Prior notification must be received at least one month before the alternative site/facility is utilised. Licences for alternative sites must be provided.
- E.81 The Council reserves the right to visit specified sites/facilities in accordance with its “Duty of Care” responsibilities under the Environmental Protection Act 1990 and the Hazardous Waste (England and Wales) Regulations 2005 (as amended).
- E.82 Contractors must provide clear and detailed contingency plans within their tender proposal to circumvent the issue of a waste facility being unavailable for use. Contractors will be expected to fulfil their obligations to the Council in such circumstances at no extra cost to the Council. If a contingency plan is to be implemented Contractors must inform the relevant Council’s representative in writing to ensure adherence to the Environmental Protection Act 1990, the Environmental Protection (Duty of Care) Regulations 1991 and the Waste (England and Wales) Regulations 2011.
- E.83 The notification to the Council representative must include as a minimum: -
- The nature of the problem
 - Expected timescales for resolution of the problem
 - Any potential adverse effect on services

Estimated Quantities of Waste

- E.84 The current quantities of waste the bidder will be expected to manage are provided below in this specification. The quantities and collection frequencies are provided as guidance only.
- E.85 Estimated quantities shall indicate only the probable requirements for the period referred to and the Council shall not be bound by such quantities.
- E.86 Estimated waste and recycling quantities are listed below for 2019/2020 and 2020/2021

| Estimated Waste / Recycling Quantities | 2019/2020 | 2020/2021 | Average |
|--|------------|------------|------------|
| Residual Waste (Blended black bag & shredded bulky) | 825 tonnes | 779 tonnes | 802 tonnes |
| Recycling (dry mixed / segregated) | 124 tonnes | 133 tonnes | 128 tonnes |
| Flat glass | 10 tonnes | 10 tonnes | 10 tonnes |
| Asbestos | 1 tonne | 2 tonnes | 1.5 tonnes |
| Plasterboard | 1 tonne | 2 tonnes | 1.5 tonnes |
| Hazardous waste (paints, chemicals, oils, oily waste) | 1 tonne | 1 tonne | 1 tonne |

| | | | |
|----------------------|-------------------|-------------------|-------------------|
| Food waste | TBC | TBC | TBC |
| TOTAL Tonnage | 962 tonnes | 926 tonnes | 944 tonnes |

- E.87 Weighbridge facilities must be available at all disposal and segregation sites. These facilities must be independently checked at least once a year and evidence of weighing bridge calibration maintained accordingly.

Communication

- E.88 Contractors will instigate and attend a monthly meeting with the Council and the Isles to provide appropriate management and waste control information and strategic advice to the Council, including waste minimisation, communications and engagement with service users, increasing opportunities for recycling as well as new innovations.
- E.89 Contractors will meet separately with the Council and the Isles of Scilly Steamship Company quarterly to review waste haulage processes and improvement opportunities.

Competence & Training

- E.90 Contractors must ensure all staff and any sub-contractors are fully trained, qualified and competent to deliver the requirements of the contract with minimal impact on the environment.

Sub-Contracting

- E.91 Contractors must indicate within their tender proposal if they intend to sub-contract and/or employ a third party to undertake the service(s) specified within the contract specification.
- E.92 Contractors must provide within their tender proposal the names, addresses and contact details of proposed sub-contacted suppliers and/or third parties to be employed together with all relevant licenses and requirements
- E.93 Contractors will not sub-contract the collection, transportation or disposal of waste without the prior consent in writing of the Council.
- E.94 Where sub-contracting arrangements do exist, Contractors will arrange for all invoices to be co-ordinated and combined resulting in one consolidated monthly invoice being submitted to the Council.

Major Incidents

- E.95 In the event of a major incident Contractors will be responsible for the disposal of the waste generated by the Council.
- E.96 The Council in conjunction with Emergency Services and the Environmental Agency will advise Contractors of the nature of the waste.
- E.97 Contractors should note that if a major incident were to occur additional bins/containers could be required in addition to those already on the islands.

Contingency Plans

- E.98 Contractors must provide a Business Continuity Plan outlining proposals for the continued provision of waste management services throughout the length of the contract in the event of them being served a notice from the Regulatory Body which renders them unable to transport or conduct waste disposal operations under the current and valid waste management licenses or waste carriers license, or in the case of a major breakdown or outage at Contractors' main waste disposal sites. The Contingency Plans must cover all waste streams.

Contract Management & Key Performance Indicators (KPI's)

- E.99 Contractors will be required to nominate competent persons as Contract Managers – they must be able to be contacted during operational hours with regard to day-to-day contract management.
- E.100 When Contract Managers are unavailable (through absence, leave, etc.) Contractors must notify the Council' Authorised Officers in writing of the named representatives to deputise together with their current qualifications and experience.
- E.101 Contractors will be required to nominate competent persons who can be contacted in the event of an emergency. An out of office out of hours phone number will be required.
- E.102 Formal meetings will be held quarterly and annually. These will be held at a minimum of five working days' notice. As a minimum, formal meetings will cover the following:
- i. Performance and standards of service
 - ii. Trends in Key Performance Indicators
 - iii. Continuous environmental improvement measures
 - iv. Legislation
 - v. Review/update of contingency plans
 - vi. Payments
 - vii. Future developments
- E.103 Contractors will assist in the development of Key Performance Indicators to measure waste management within the Council; Key Performance Indicators may include:
- i. Costs (£)
 - ii. Scheduled contract meetings (formal & informal)

- iii. Waste sent to Energy recovery (tonnes)
 - iv. KWH energy generated (kwh)
 - v. Recycling rates (tonnes by waste stream)
 - vi. Carbon emissions from each waste stream (tCO2e)
 - vii. Provision of Waste Carriers Licences, Exemptions, etc
 - viii. Breaches in legislation (prosecutions, etc)
 - ix. Waste documentation (% completed)
 - x. Duty of Care Reports (provided)
 - xi. Residual & DMR composition analysis (tonnes)
 - xii. Complaints & missed collections (No.)
 - xiii. Business Continuity plan reviews
 - xiv. Risk register reviews
- E.104 Contractors Contract Managers and the Council's Authorised Officers will be responsible for monitoring the quality and effectiveness of the service.
- E.105 A team comprising appropriate personnel from the Council and the Contractors shall review contract performance. This review team shall meet on a formal and informal basis.
- E.106 The Waste Company's Nominated Officer will, within two (2) working days, acknowledge all complaints in writing to the Council's Authorised Officer. All complaints must be answered in writing within 7 working days.
- E.107 The Council, in accordance with their Duty of Care principles will agree a formal monitoring system with the Contractor, to commence at the start of the contract and be based on a continuous assessment process throughout the life of the contract.
- E.108 The Council reserves the right to visit any specified holding/treatment disposal sites during the contract period.

Changes to services, additional services and innovation

- E.109 Contractors must detail what innovative ideas they can offer to reduce costs on an on-going basis for the provision of waste and recycling services.
- E.110 Contractors must assume that the Council will produce the waste streams specified until advised otherwise.
- E.111 Should the Council require additional waste and recycling services not already included within this specification during the lifespan of this contract then further discussion will be undertaken with Contractors to agree any expansion of the contract terms.
- E.112 Ongoing changes to waste diversion including waste disposal methods are in the process of being achieved as part of the Council's Waste Reduction Strategy. All

Invitation to Tender for the transfer and final disposal of waste and recycling arising from the Council of the Isles of Scilly
changes necessary in view of the above will be made as and when required by the agreement of Contractors and the Council' Authorised Officers.

- E.113 Contractors are encouraged to provide written proposals for any additional Services they believe should/can be added to the contract. The Council welcomes any initiatives/innovations from Contractors to help minimise waste levels and increase reuse/recycling. These initiatives should be sustainable and cost effective and include evidence of environmental best practice. Contractors should include all proposals in writing.
- E.114 Contractors will provide the Council with sustainable solutions to current and future waste legislation (including guidance and advice).
- E.115 Contractors will develop controlled recycling segregation practices to ensure the Council obtain the best possible value for money.

Certificates and Licenses

- E.116 Contractors must include within their tender submission all relevant certificates and licenses, in particular: -
- i. Waste Carrier Registration Certificate
 - ii. Waste Management License/Permit/Exemption (detailing list of EWC codes that each site is authorised to accept)
 - iii. Full details of where the appropriate treatment site is located
 - iv. Contractors shall immediately advise the Council's Authorised Officers or appointed representatives of any suspension, withdrawal or refusal to renew any license, certificate or permissions applicable to carrying out the requirements of this Contract.

The Council reserve the right to accept or reject all or part of the proposals.

Section F: Draft Contract

(1) The Council of the Isles of Scilly [THE COUNCIL]

-and-

(2) [THE CONTRACTOR]

AGREEMENT

Relating to the provision of the transfer and final disposal of residual waste and recycling
arising from the Council of the Isles of Scilly

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| 2 | Term |
| 3 | Contractor Warranties and Undertakings |
| 4 | Council's Obligations |
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Part 2 Provision of the Services

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| 11 | The Services |
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- 59 Dispute/Resolution

THIS AGREEMENT is made on [date in manuscript]

BETWEEN

- (1) **The Council of the Isles of Scilly of Town Hall, St Mary's, Isles of Scilly, TR21 0LW** (the "Council"); and
- (2) **[CONTRACTOR] LIMITED** (company registered number []) whose registered office is at [] (the "Contractor").

RECITALS:

- (A) The Council named in Contract Notice WTS 170316 is contracting with a Contractor for the Removal of Waste from St Mary's, Isles of Scilly to a Suitable Waste Management Site
- (B) The Council and the Contractor have agreed that the Contractor shall provide and the Council shall co-operate with it in providing the Services in the manner and upon the terms hereinafter set out.

OPERATIVE PROVISIONS:

Part 1 – General Provisions

1. Definitions and Interpretations

- 1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

"1976 Act" means the Race Relations Act 1976.

"1999 Act" means the Local Government Act 1999 (as amended by the Local Government and Public Involvement in Health Act 2007).

"Agreement" means this agreement between the Council and the Contractor consisting of these clauses and any attached Schedules, the Invitation to Tender, [and any other documents (or parts thereof) specified by the Council].

"Approval" and "Approved" means the written consent of the Contract Manager.

“Council Property” means any property, other than real property, issued or made available to the Contractor by the Council in connection with the Agreement.

“Council Related Party” means any officer, servant, employee or agent of the Council acting in that capacity.

“Best Value Duty” means the duty imposed on the Council by Part 1 of the 1999 Act 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 Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act.

“Commencement Date” means [the date of the Agreement].

“Commercially Sensitive Information” means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:

- (a) which is provided by the Contractor to the Council in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

“Commercially Sensitive Information Schedule” means the Schedule containing a list of the Commercially Sensitive Information.

“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 which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information.

“Contract Manager” means the person for the time being appointed by the Council as being authorised to administer the Agreement on behalf of the Council or such person as may be nominated by the Contract Manager to act on its behalf.

“Contract Waste” means all residual and bulky waste, as defined in the Specification, which is to be included as directed to the Contractor’s Representative by the Contract Manager, together with any other such non-hazardous waste as required from time to time to be removed from the site, subject to any agreed variation in associated cost..

“Contractor Related Party” means the Contractor's agents and Sub-Contractors and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project and any person on or at the Council’s Premises at the express or implied invitation of the Contractor (other than the Council).

“Contracting Council” means any contracting Council as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Council.

“Contractor’s Representative” means the individual authorised to act on behalf of the Contractor for the purposes of the Agreement.

“Criminal Records Bureau” means the bureau established pursuant to Part V of the Police Act 1997.

“Default” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

“Equipment” means the Contractor’s equipment, plant, materials, and such other items supplied and used by the Contractor in the performance of its obligations under the Agreement.

“Environmental Information Regulations” means the Environmental Information Regulations 2004.

“Extension” means the extension of the duration of the Agreement agreed in accordance with clause 47.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Council in relation to such legislation.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Contractor’s Staff or any staff of any sub-contractor.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

“Good Industry Practice” means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000.

“Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender” means an invitation for Contractors to bid for the Services required by the Council.

“Key Personnel” mean those persons named in the Specification as being key personnel.

“Landfill Tax” has the meaning defined in Finance Act 1996 (sections 39 to 71 inclusive, and Schedule 5); Landfill Tax Regulations 1996 (SI 1996 No. 1527), as amended; Landfill Tax (Qualifying Material) Order 2011 (SI 2011 No. 1017); Landfill Tax

(Prescribed Landfill Activities) Order 2009 (SI 2009 No. 1929); and any subsequent legislation.

“Law” means any applicable Act of Parliament, sub-ordinate 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, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.

“Elements” means the Two aspects of the Services which will be let as Lots or a single contract i.e.:

- Transportation of containerised materials to an appropriate location on St Marys for loading and onward marine shipment, in accordance with current UK regulations and with all necessary permissions from relevant harbour and port authorities, to an appropriate authorised mainland port.
- Marine shipping, offloading and haulage to a contractor appointed by a separate procurement process.

“Month” means calendar month.

“Named Employee” has the meaning given to it in clause 32.1

“Party” means a party to the Agreement and “Parties” shall be construed accordingly.

“Premises” means the location where the Services are to be performed, as specified in the Specification.

“Price” means the price exclusive of any applicable Tax, payable to the Contractor by the Council under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with clause 24.

“Pricing Schedule” means the Schedule containing details of the Price.

“Quality Standards” means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body

that a skilled and experienced operator engaged in the same type of industry or business as the Contractor would reasonably and ordinarily be expected to comply as supplemented by the Specification.

“Regulatory Bodies” means those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party Contractor appointed by the Council from time to time, to provide any services which are substantially similar to any of the Services, and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement, whether those services are provided by the Council internally and/or by any third party.

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

“Schedule” means a schedule attached to the Agreement.

“Services” means the services to be provided as specified in the Specification.

“Specification” means the description of the Services to be provided under the Agreement and attached as the Specification Schedule.

“Specification Schedule” means the Schedule containing details of the Specification.

“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Council, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.

“Staff” means all persons employed by the Contractor to perform the Agreement together with the Contractor’s servants, agents and sub-contractors used in the performance of the Agreement.

“Sub-Contractor” means any sub-contractor or any person engaged by the Contractor from time to time as may be permitted by this Contract to procure the provision of the Services (or any of them).

“Tax” means value added tax.

“Tender” means the Contractor’s response to the Invitation to Tender (as subsequently clarified in []).

“Term” means the period of duration of the Agreement in accordance with clause 2.1.

“Users” means a reasonably representative sample of those users who consume or benefit from the Services

“Variation” has the meaning given to it in 43.1

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London

1.2 In the Agreement except where the context otherwise requires:

- (a) the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;
- (d) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (e) 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;
- (f) 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 assignees or transferees;
- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- (h) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

2 Term

- 2.1 The Agreement shall take effect on the 1st April 2022 or on any early date upon which the Contractor and the Council execute the Agreement which ever is the sooner and shall, subject to clause 2.2, be completed by 30th March 2025, or upon completion of the removal of the Contract Waste, unless another completion date is agreed between the Council and the Contractor, and unless it is otherwise terminated in accordance with the Agreement, or otherwise lawfully terminated.
- 2.2 The Council may seek to extend the duration of the Agreement in accordance with clause 47. During the Extension, the obligations under the Agreement shall continue (subject to any Variation) or adjustment to the Price pursuant to clause 24 until the expiry of the period specified in accordance with clause 47.

3 Contractor Warranties and Undertakings

3.1. Contractor Undertakings

The Contractor undertakes with the Council that for so long as this Contract remains in force:

- 3.1.1 it will not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself or a Sub-Contractor.

3.2 Contractor Warranty

The Contractor warrants and represents to the Council that as at the date of this Contract:

- 3.2.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 3.2.1 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
- 3.2.2 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken;

- 3.2.3 the obligations expressed to be assumed by the Contractor under this Contract will be, legal, valid, binding and enforceable;
- 3.2.4 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract, any Ancillary Document or any Other Contract Document;
- 3.2.5 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract; and
- 3.2.6 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 3.2.7 it is undertaken all necessary due diligence in compiling its tender submission in response to the Council's invitation to tender and in accepting this Agreement. Any such due diligence should include but is not limited to discussion with all other relevant authorities and bodies with whom the Contractor will interact during the term of the Agreement, and that all costing has been priced accordingly.
- 3.2.8 it has obtained all necessary permissions and permits, both on land, and sea, to undertake and perform the Services

and the Council relies upon such warranties and representations.

3.3 No Warranty by Council

Subject to Clause 3.5 (Fraudulent Statements), the Council does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the data provided in the Invitation to Tender documentation.

3.4 No Liability to Contractor

Subject to Clause 3.5 (Fraudulent Statements) neither the Council nor any of its agents or employees shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

- 3.4.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the data provided in the Invitation to Tender; or
- 3.4.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.

3.5 Fraudulent Statements

The Contractor warrants:

- 3.5.1 nothing in this Clause 3 (General Warranties and Undertakings) shall exclude any liability which the Council or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently prior to the date of this Contract; and
- 3.5.1 the provisions of this Clause 3 (General Warranties and Undertakings) are without prejudice to the Contractor's express rights and remedies under or pursuant to this Contract.

3.6 Contractor's Due Diligence

The Contractor warrants:

- 3.6.1 they have gathered all information necessary to perform its obligations under this Contract; and
- 3.6.2 it will fulfil the duties of the Council in the haulage, treatment and/or disposal of Contract Waste.

4 Council's Obligations

- 4.1 Save as otherwise expressly provided, the obligations of the Council under the Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way

fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Council to the Contractor.

5 Entire Agreement

- 5.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
- 5.2 Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. Should the Contractor become aware of any ambiguities or discrepancies in or between the Contract Documents, the Contractor shall immediately inform the Contract Manager giving full details of the ambiguity or discrepancy. Any such notified ambiguities or discrepancies or any ambiguities or discrepancies otherwise coming to the notice of the Contract Manager shall be resolved by the Contract Manager who shall issue to the Contractor any appropriate instructions.
- 5.3 In the event of and only to the extent of any conflict between the body of the Agreement, Specification, Invitation to Tender, Contractor's Tender and other documents referred to or attached to the Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (1) the Agreement;
 - (2) the Specification;
 - (3) the Contractor's completed Pricing Schedule;
 - (4) the Contractor's Service Delivery Plan; and
 - (5) any other document referred to in the Agreement.

Unless expressly agreed, a document varied pursuant to Clause 43 shall not take higher precedence than specified here.

- 5.4 The Agreement will be executed as a single Contract. . Where the Services are sub-contracted, the principal Contractor shall liaise with and work with such parties and shall include any costs for this in their tender.

6 Scope of Agreement

- 6.1 Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Council and the Contractor.

7 Notices

- 7.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.
- 7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 7.3 For the purposes of clause 7.2, the address of each Party shall be:

(a) For the Council:

Council of the Isles of Scilly, Town Hall,

St Marys, Isles of Scilly, TR210LW

For the attention of Keith Grossett:

Tel: +44 1720424491

E-mail: Tanya.Saker@scilly.gov.uk

(b) For the Contractor:

[]

[Address:]

[]

For the attention of:

Tel:

E-mail:

- 7.4 Either Party may change its address for service by serving a notice in accordance with this clause.
- 7.5 The Contractor's Representative shall be [] or such other person appointed pursuant to this Clause. The Contractor's Representative shall have full Council to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Council, the Council and the Contract Manager shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Council and the Contractor Manager shall not be required to determine whether any express Council has in fact been given.
- 7.6 The Contractor may by notice to the Council change the Contractor's Representative. Where the Contractor wishes to do so, it shall by written notice to the Council propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Council (not to be unreasonably withheld or delayed).
- 7.7 The Contract Manager shall be appointed by the Council at, or prior to, the Contract Commencement date or such other person appointed pursuant to this Clause. The Contract Manager shall exercise the functions and powers of the Council in relation to the Project which are identified in this Contract as functions or powers to be carried out by the Contract Manager. The Contract Manager shall also exercise such other functions and powers of the Council under this Contract as may be notified to the Contractor from time to time.
- 7.8 The Contract Manager shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the Council delegated to him pursuant to this Clause, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Contract Manager and all references to the "Contract Manager" in this Contract (apart from this Clause) shall be taken as reference to such person so far as they concern matters within the scope of such person's Council.
- 7.9 The Council may by notice to the Contractor change the Contract Manager. The Council shall (as far as practicable) consult with the Contractor prior to the appointment of any replacement for the Contract Manager, taking account of the need for liaison and

continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of an Emergency, be such date as will not cause material inconvenience to the Contractor in the execution of its obligations under this Contract).

8 Mistakes in Information

- 8.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Contractor in connection with the provision of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

9 Conflicts of Interest

- 9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is 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 such persons and the duties owed to the Council under the provisions of the Agreement. The Contractor will disclose to the Council full particulars of any such conflict of interest which may arise.
- 9.2 The provisions of this clause shall apply during the continuance of the Agreement and for a period of two years after its termination.

10 Fraud

- 10.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, and directors) and/or any of the Contractor's suppliers, in connection with the receipt of monies from the Council. 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.

Part 2 – The Provision of the Services

11 The Services

- 11.1 The Contractor shall provide the Services during the Term in accordance with the Council's requirements as set out in the Specification and the terms of the Agreement in consideration of the payment of the Price. The Council shall have the power to inspect and examine the performance of the Services at the Council's Premises at any reasonable time or, provided that the Council gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.
- 11.2 The Contractor shall at all times deliver the Services in accordance with the Law.
- 11.3 In the event that the Council notifies the Contractor of the Council's reasonably held opinion that any part of the Services do not meet the requirements of the Agreement or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Council, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Council.
- 11.4 Subject to the Council providing Approval in accordance with clause 13.3, timely provision of the Services shall be of the essence of the Agreement, including in relation to commencing the provision of the Services within the time agreed or on a specified date.
- 11.5 Without prejudice to any other rights and remedies the Council may have pursuant to the Agreement, the Contractor shall reimburse the Council for all reasonable damages, loss and costs incurred by the Council which have arisen as a consequence of the Contractor's delay in the performance of its obligations under the Agreement and which delay the Contractor has failed to remedy following reasonable notice from the Council. For the avoidance of doubt, the Contractor's obligation to reimburse the Council under this clause does not arise to the extent that the delay was caused by a delay or failure by the Council to provide Approval under clause 13.3.
- 11.6 The Contractor shall remove all Contract Waste from the Council Premises as directed by the Contract Manager. The Contractor shall take responsibility and ownership of Contract Waste whilst it is within their care.

12 Manner of Carrying Out the Services

- 12.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.
- 12.2 All Equipment brought onto the Council's Premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Council's Premises will remain the property of the Contractor.
- 12.3 The Contractor shall maintain all items of Equipment within the Council's Premises in a safe, serviceable and clean condition.
- 12.4 All Equipment shall be at the risk of the Contractor and the Council shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Council.
- 12.5 The Council shall have the power at any time during the performance of the Services to order in writing that the Contractor:
- (a) remove from the Council's Premises any Equipment which in the opinion of the Council is either hazardous, noxious or not in accordance with the Agreement; and
 - (b) if the Council has ordered the Contractor to remove any item of Equipment in accordance with clause 12.5 (a) above, to replace such item with a suitable substitute item of Equipment.
- 12.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the services in order to leave the Council's Premises in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible for making good any damage to the Council's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors.
- 12.7 Access to the Council's Premises shall not be exclusive to the Contractor but shall be limited to such Staff and the Contractor's suppliers as are necessary to perform the Services concurrently with the execution of work by others. The Contractor shall co-

operate free of charge with such others on the Council's Premises as the Council may reasonably require.

- 12.8 The Contractor shall be required to provide evidence of the Certified Tonnage of Contract Waste leaving the Council Site, together with evidence of the Certified Tonnage on the Contract Waste delivered to the final destination site in accordance with the Specification. The Council will pay the Contractor the value of the total of the Certified Tonnage in accordance with the Price upon receipt of the evidence required subject to a maximum weight variation of 2% of the Certified Tonnage amount.

13 Standard of Work

- 13.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Agreement, the Contractor shall agree the relevant standard of Services with the Contract Manager prior to the delivery of the Services, and the Contractor shall undertake its obligations in accordance with Good Industry Practice. The Contractor shall at all times comply with statutory requirements for the loading, haulage and disposal of Contract Waste.
- 13.2 The Contractor warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services
- 13.3 The introduction of new methods or systems which adversely affect the provision of the Services shall be subject to prior Approval.
- 13.4 The signing by the Contract Manager (or his representative) of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Agreement.
- 13.5 The Contractor is required to produce all risk assessments, methodologies and work program to enable the Services to be provided in accordance with the Specification. All risk assessments, methodologies and work programmes will be submitted to the Council for approval and the Council at its sole discretion will be entitled to reject any risk assessments, methodology or work programme which fail to deliver the required standard of work in accordance with clause 13.1 and require the Contractor at the

Contractors own expense to prepare new or alternate Risk Assessments and Methodologies to the satisfaction of the Council.

- 13.6 It is the responsibility of the Contractor to ensure any port or other landing areas are suitable for use and that they have the appropriate approvals and consents to allow such areas to be used for the purpose of providing the Services. The Contractor warrants that the cost of using any such port or landing area has been included within the Contractors total cost for providing the Services. Any refusal or withdrawal of consent will be at the risk of the Contractor, and the cost of finding alternate methods of removal as a result of such refusal or withdrawal will be borne by the Contractor.

14 Key Personnel

- 14.1 Key Personnel shall not be released from providing the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 14.2 Any replacements to the Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 14.3 The Council shall not unreasonably withhold its agreement under clause 14.1 or clause 14.2. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Agreement which could be caused by a change in Key Personnel.

15 Contractor's Staff

- 15.1 The Council reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

- (a) any member of the Staff; or
- (b) any person employed or engaged by a sub-contractor, agent or servant of the Contractor;

Whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

- 15.2 If and when directed by the Council, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Agreement to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Council may reasonably desire.
- 15.3 The Contractor's Staff, engaged within the boundaries of any of the Council's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- 15.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.
- 15.5 The Contractor shall bear the cost of any notice, instruction or decision of the Council under this clause.

16 Inspection of Premises

- 16.1 Save as the Council may otherwise direct, the Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Agreement to be carried out and be satisfied in relation to all matters connected with the performance of the Agreement.

17 Licence to occupy Council's Premises

- 17.1 Any land or Premises (including temporary buildings) made available to the Contractor by the Council in connection with the Agreement, shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Agreement. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.
- 17.2 The Contractor shall not use the Council's Premises for any purpose or activity other than the provision of the Services.
- 17.3 Should the Contractor require modifications to the Council's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Council at the Contractor's expense. The Council shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Council.

- 17.4 The Contractor shall (and shall ensure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council, and the Contractor shall pay for the cost of making good any damage caused by the Contractor, his employees, servants, agents, suppliers or sub-contractors 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.
- 17.5 The Parties agree that there is no intention on the part of the Council to create a tenancy of whatsoever nature in favour of the Contractor or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Agreement, the Council retains the right at any time to use in any manner the Council sees fit any premises owned or occupied by it.

18 Council Property

- 18.1 Where the Council for the purpose of the Agreement issues Council Property to the contractor on a hire basis, or at its discretion as a free issue, such property shall be and remain the property of the Council. The Contractor shall not in any circumstances have a lien on the Council Property and the Contractor shall take all reasonable steps to ensure that the title of the Council to such Council Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Agreement.
- 18.2 Any Council Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Council otherwise within 5 Working Days of receipt.
- 18.3 The Contractor shall maintain all Council Property in good order and condition, excluding fair wear and tear, and shall use Council Property solely in connection with the Agreement and for no other purpose without prior Approval.
- 18.4 The Contractor shall ensure the security of all Council Property, whilst in the Contractor's possession, either on its premises or elsewhere during the performance of the Agreement, in accordance with the Council's reasonable security requirements as required from time to time.

- 18.5 The Contractor shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Council Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Council. The Contractor's liability set out in this clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Council. The Contractor shall inform the Contract Manager within 2 Working Days of becoming aware of any defects appearing in or losses or damage occurring to Council Property made available for the purposes of the Agreement.

19 Sub-Contracting for the delivery of the Services

- 19.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.
- 19.2 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which allows the Council to enter into a direct agreement with the Sub-Contractor under the same terms and conditions as the Contractor – Sub-Contractor contract should the Contractor – Sub-Contractor contract be terminated or fail to deliver the Services.
- 19.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing this Agreement, it is agreed by the parties that the cost incurred by the Contractor in providing this instruction is included within the Price.
- 19.4 The Contractor will, where it is providing services at the Council's Site, or under the direct over-sight of the Council and it intends to enter into any sub-contract in the performance of the Services notify the Council of the contact details and legal representatives of its sub-contractor prior to performance of the Services.
- 19.5 In addition to clause 19.4 above the Council, during the Term of the Agreement, shall require the Contractor to:
- a) notify the Council of any changes to information provided under clause 19.4, and

- b) Notify the Council of the name, contact details and legal representatives of any new subcontractors which the main contractor subsequently involves in such works or services.

20 Offers of Employment

- 20.1 For the duration of the Agreement and for a period of 12 months thereafter neither of the Council or the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior Approval.

Part 3 – Payment and Price

21 Price

- 21.1 In consideration of the performance of the Contractor's obligations under the Agreement by the Contractor, the Council shall pay the Price in accordance with Clause 22.
- 21.2 The Council shall pay the Contractor, on the production of a valid Tax invoice, in addition to the Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Agreement.

22 Payment and Tax

- 22.1 The Council shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the reasonable satisfaction of the Council.
- 22.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice.
- 22.3 Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.
- 22.5 The Council may, in accordance with clause 45.1 (a), 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 Council.

- 22.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement under clause 52.3 for failure to pay undisputed charges.

23 Recovery of Sums Due

- 23.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Council in respect of any breach of the Agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Council.
- 23.2 Any overpayment by either Party, whether of the Price or of Tax, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 23.3 The Contractor shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Contractor.

24 Price adjustment on Extension

- 24.1 Subject to clause 22.4 the Price shall remain fixed for the Term.
- 24.2 In the event of a possible Extension, the Council reserves the right to review any charges payable to the Contractor for the provision of services beyond the Term.
- 24.3 If the Council approaches the Contractor in accordance with Clause 47 concerning an Extension, the Council must agree the Price to be payable to the Contractor for the provision of any services during the Extension, at least 1 months prior to the end of the Term.
- 24.4 Any claim for an increase in the charges during an Extension will only be considered if the increase does not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (or another such index as notified to the Contractor in writing) between the Commencement Date and the date 3 months before the end of the Term.

25 Euro

- 25.1 Any legislative requirement to account for the services in euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Council.
- 25.2 The Council shall provide all reasonable assistance to facilitate compliance by the Contractor under clause 25.1.

26 Change of Law

- 26.1 The Contractor shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the Price and/or any charges payable by the Contractor as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.
- 26.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 26.1) or during any extension agreed pursuant to clause 24, the Contractor shall notify the Council of the likely effects of that change, including:
- (a) whether any change is required to the Services, the Price or the Agreement; and
 - (b) whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.
- 26.3 As soon as practicable after any notification in accordance with clause 26.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:
- (a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;
 - (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;

- (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.
- 26.4 Any increase in the Price or relief from the Contractor's obligations agreed by the Parties pursuant to this clause 26 shall be implemented in accordance with clause 43.

Part 4 - Statutory Obligations, Codes of Practice and Regulations

27 Prevention of Corruption

- 27.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
- 27.2 The Contractor warrants that it has not paid commission or has agreed to pay any commission to any employee or representative of the Council by the Contractor or on the Contractor's behalf.
- 27.3 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 27.1 or 27.2 in relation to this or any other contract with the Council, the Council has the right to:
- (a) terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Goods and any additional expenditure incurred by the Council throughout the remainder of the Term; or
 - (b) recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause, whether or not the Agreement has been terminated.

28 Discrimination

- 28.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998, the Equalities Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 28.2 The Contractor shall take all reasonable steps to secure the observance of clause 28.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

29 The Contracts (Rights of Third Parties) Act 1999

- 29.1 No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Council or the Contractor) shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to the clause 29. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

30 Environmental Sustainability Requirements

- 30.1 The Contractor shall, when working on the Council's Premises, perform the Agreement in accordance with the Council's environmental sustainability requirements;
- (a) Carbon Reduction Commitment (Zero carbon by 2030)
 - (b) Waste Reduction Strategy (25% waste reduction by 2030)
 - (c) Conserving valuable resources such as energy, water, fuel, wood, paper, etc and phasing out other substances damaging to health and the environment.

31 Health and Safety

- 31.1 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of the Agreement. The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Council's Premises and which may affect the Contractor in the performance of the Agreement.
- 31.2 While on the Council's Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working on those Premises.
- 31.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of the Agreement on the Council's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 31.4 The Contractor shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Agreement.
- 31.6 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

32 Disclosure and Barring Service

- 32.1 The Contractor shall procure that in respect of all potential Staff or persons performing any of the Services (each a "Named Employee") before a Named Employee begins to attend any Council premises to perform any of the Services:
- (a) each Named Employee is questioned as to whether he or she has any convictions; and
 - (b) the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in accordance with Part V of the Police Act 1997

in respect of each Named Employee. The check for each Named Employee shall include:

- (i) a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Services may involve contact with children; and/or
- (ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000 where the performance of the Services may involve contact with vulnerable adults (as defined in the Care Standards Act).

(c) a copy of the results of such check are notified to the Council.

32.2 The Contractor shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a Criminal Records Bureau check, is employed or engaged by the Contractor or on the Contractor's behalf without the Council's prior written consent (such consent not to be unreasonably withheld or delayed).

32.3 The Contractor shall procure that the Council is notified of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Contractor (or any employee of a sub-contractor involved in the provision of the Services). The Parties agree that where such notification is made it shall be reasonable for the Council to withhold access to any premises occupied for the purposes of the Services from the member of Staff concerned, pursuant to clause 15.1.

Part 5 - Protection of Information

33. DATA PROTECTION

33.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule A. The only processing that the Processor is authorised to do is listed in Schedule A by the Controller and may not be determined by the Processor.

33.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

33.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- 33.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 33.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 33.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 33.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 33.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 33.4.1 process that Personal Data only in accordance with Schedule A, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 33.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - 33.4.3 Ensure that :
 - (a) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A);
 - (i) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (ii) are aware of and comply with the Processor's duties under this clause;
 - (iii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iv) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and

- (v) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 33.5 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - 33.5.1 the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - 33.5.2 the Data Subject has enforceable rights and effective legal remedies;
 - 33.5.3 the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - 33.5.4 the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - 33.5.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
- 33.6 Subject to clause 13.6, the Processor shall notify the Controller immediately if it:
 - 33.6.1 receives a Data Subject Request (or purported Data Subject Request);
 - 33.6.2 receives a request to rectify, block or erase any Personal Data;
 - 33.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 33.6.4 receives any communication from the Information Council or any other regulatory Council in connection with Personal Data processed under this Agreement;
 - 33.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 33.6.6 becomes aware of a Data Loss Event.
- 33.7 The Processor's obligation to notify under clause 13.5 shall include the provision of further information to the Controller in phases, as details become available.
- 33.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 13.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- 33.8.1 the Controller with full details and copies of the complaint, communication or request;
 - 33.8.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 33.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 33.8.4 assistance as requested by the Controller following any Data Loss Event;
 - 33.8.5 assistance as requested by the Controller with respect to any request from the Information Council's Office, or any consultation by the Controller with the Information Council's Office.
- 33.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 33.9.1 the Controller determines that the processing is not occasional;
 - 33.9.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 33.9.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 33.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 33.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- 33.12.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 33.12.2 obtain the written consent of the Controller;
 - 33.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
 - 33.12.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 33.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 33.14 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or

similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

- 33.15 The Parties agree to take account of any guidance issued by the Information Council's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Council's Office.
- 33.16 Where the Parties include two or more Joint Controllers as identified in Schedule A in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule B in replacement of Clauses 13.1-13.14 for the Personal Data under Joint Control Liability.

34 Confidentiality

34.1 Each Party:

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (b) 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 the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

34.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Agreement:

- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
- (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Agreement.

34.3 The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's confidentiality obligations under the Agreement.

34.4 The Contractor shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Agreement.

34.5 The provisions of clauses 34.1 to 34.4 shall not apply to any Confidential Information received by one Party from the other:

- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 35.

34.6 Nothing in this clause shall prevent the Council:

- (a) disclosing any Confidential Information for the purpose of:
 - (i) the examination and certification of the Council's accounts; or
 - (ii) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:
 - (i) to any government department or any other Contracting Council. 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 and is not to be disclosed to a third party which is not part of any government department or any Contracting Council; or

- (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Agreement;

provided that in disclosing information under sub-paragraph (b) 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.

34.7 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement 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.

34.8 The Council and the Contractor acknowledge that any Confidential Information originating from:

34.8.1 the Council, its employees, servants or agents is the property of the Council; and

34.8.2 the Contractor, its servants, agents or the [contractor] Personnel is the property of the Contractor.

34.9 The parties acknowledge that the Council is obliged to disclose the provisions of this Contract in accordance with the Office of Government Commerce's Guidance Note of September 2010, except to the extent that any information contained within it is exempt from disclosure in accordance with FOIA. In determining whether any information is exempt the Council shall consult with the Contractor and shall take its reasonable concerns into consideration, provided that the Council shall have the final decision in its absolute discretion. The Contractor shall co-operate and assist the Council to publish this Contract in accordance with the Council's obligation.

35 Freedom of Information

35.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with these Information disclosure requirements.

35.2 The Contractor shall and shall procure that its sub-contractors shall:

- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within [two] Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within [five] Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].
- 35.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and
 - (b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 35.4 The Contractor acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- (a) without consulting with the Contractor, or
 - (b) following consultation with the Contractor and having taken its views into account.
- 35.5 The Contractor shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 35.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may

nevertheless be obliged to disclose Confidential Information in accordance with clause 35.4.

36 Security of Confidential Information

- 36.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Contractor undertakes to maintain security systems approved by the Council.
- 36.2 The Contractor will immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under Clause 34. The Contractor will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

37 Publicity and Media

- 37.1 Without prejudice to the Council's obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 37.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 37.1 by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 37.1 by its sub-contractors.

38 Security

- 38.1 The Council shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Council while on the Premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

39 Intellectual Property Rights

- 39.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- (a) furnished to or made available to the Contractor by the Council shall remain the property of the Council;
 - (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Agreement shall belong to the Council and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Contractor may obtain in performing the Agreement except information which is in the public domain.
- 39.2 The Contractor shall obtain Approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Council a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Council 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-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
- 39.3 It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Term on written demand indemnify and keep indemnified the Council against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:
- (a) designs furnished by the Council;
 - (b) the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of the Agreement.

- 39.4 The Council shall notify the Contractor in writing of any claim or demand brought against the Council 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:
- (a) shall consult the Council on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Council; and
 - (c) shall not settle or compromise any claim without the Council's prior written consent (not to be unreasonably withheld or delayed).
- 39.5 The Council 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 Council or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Agreement and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause 39.3(a) and (b),
- 39.6 The Council shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Council or the Contractor in connection with the performance of the Agreement.
- 39.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Council (not to be unreasonably withheld or delayed) either:
- (a) 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

(b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Council.

39.8 At the termination of the Agreement the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held, including any back-up media.

39.9 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

40 Audit and the Audit Commission

40.1 The Contractor shall keep and maintain until six years after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request afford the Council or the Council's representatives or the Audit Commission such access to those records as may be required by the Council or the Audit Commission in connection with the Agreement.

Part 6 – Control of the Contract

41 Assignment and Sub-Contracting

41.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Agreement or any part of it without prior Approval. Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Agreement.

41.2 The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

41.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Contractor to the Council within 2 Working Days of such request.

- 41.4 The Contractor shall notify and update the Council with the names and key contact details of its sub-contractors and shall provide the Council with any further information that it requires to ensure that acts in accordance with any legal obligations it has.

42 Waiver

- 42.1 The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise 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 Agreement.
- 42.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 7.
- 42.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

43 Variation of the Services

- 43.1 The Council reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever. Such a change is hereinafter called "a Variation".
- 43.2 Any such Variation shall be communicated in writing by the Contract Manager to the Contractor's Representative in accordance with the notice provisions of Clause 7. All Variations shall be in the form of an addendum to the Agreement.
- 43.3 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Council and agreed in writing with the Contractor and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of Clause 59.
- 43.4 The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

44 Severability

- 44.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

45 Remedies in the Event of Inadequate Performance

- 45.1 In the event that the Council is of the reasonable opinion that there has been a material breach of the Agreement by the Contractor, or the Contractor's performance of its obligations under the Agreement has failed to meet the requirement set out in the Specification Schedule, then the Council may, without prejudice to its rights under clause 52 of the Agreement, do any of the following:

- (a) make such deduction from the Price to be paid to the Contractor as the Council shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide or performed inadequately;
- (b) without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will be able to perform such part of the Services in accordance with the Agreement;
- (c) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
- (d) terminate, in accordance with clause 52, the whole of the Agreement.

- 45.2 The Council may charge to the Contractor any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Council or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

45.3 If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Council and such failure is capable of remedy, then the Council shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.

45.4 In the event that:

(a) the Contractor fails to comply with clause 45.3. above and the failure, is materially adverse to the interests of the Council or prevent the Council from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause 45.3 above,

the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

46 Remedies Cumulative

46.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the 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.

47 Possible Extension of Term

47.1 The term of this contract may be reviewed by both parties on an annual basis and extended by mutual agreement.

Part 7 - Liabilities

48 Indemnity and Insurance

48.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

48.2 The Contractor shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This

clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or sub-contractors, or by any circumstances within its or their control.

48.3 Subject always to clause 48.1, the liability of either Party for Defaults shall be subject to the financial limits set out in this clause 48.3.

(a) The aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Agreement shall in no event exceed ten million pounds (£10m).

(b) The annual aggregate liability under the Agreement of either Party for all Defaults (other than a Default governed by clause 39.3 or clause 48.3(a)) shall in no event exceed five million pounds (£5m).

48.4 Subject always to clause 48.1, in no event shall either Party be liable to the other for:

(a) loss of profits, business, revenue or goodwill;

(b) loss of savings (whether anticipated or otherwise); and/ or

(c) indirect or consequential loss or damage unless such loss or damage was in contemplation of the Parties at the time the Agreement was entered into.

48.5 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

48.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

48.7 The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 48.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Agreement the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 48.9 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 48.2.
- 48.10 Subject to the provisions of this Contract, the Contractor shall be responsible to the Council for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor. The Contractor shall, as between itself and the Council, be responsible for the selection of and pricing by all Contractor Related Parties. Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Council, nor the failure of the same shall, unless expressly stated in this Contract, relieve the Contractor of any of its obligations under this Contract or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

49 Not Used

49.1 Not Used

50 Warranties and Representations

50.1 The Contractor warrants and represents that:

- (a) the Contractor has the full capacity and Council and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Contractor;
- (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice;

- (c) all obligations of the Contractor pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence; and
- (d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.

Part 8 – Default, Disruption and Termination

51 Termination on change of control and insolvency

51.1 The Council may terminate the Agreement by notice in writing with immediate effect where:

- (a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Agreement; or
- (b) the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or
- (c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor

or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

(d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(e) any similar event occurs under the law of any other jurisdiction.

51.2 The Contractor shall notify the Contract Manager immediately when any change of control occurs. The Council may only exercise its right under clause 51.1(a) within six months of:

(a) being notified that a change of control has occurred; or

(b) where no notification has been made the date that the Council becomes aware of the change of control;

but shall not be permitted to do so where an Approval was granted prior to the change of control of the Contractor.

51.3 If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Council shall be entitled to terminate the Agreement by notice to the Contractor or the Contractor's Representative with immediate effect.

52 Termination on Default

52.1 The Council may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:

(a) the Contractor has not remedied the Default to the satisfaction of the Council within 25 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or

(b) the Default is not, in the opinion of the Council, capable of remedy;

(c) the Default is a material breach of the Agreement.

- (d) the Agreement has been subject to substantial modification which would have required a new procurement procedure in accordance with section 72(9) Public Contracts Regulations 2015
- (e) the Contractor has, at the time of contract award, been in one of the situations referred to in section 57(1) Public Contract Regulations 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or
- (f) the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

52.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Council for any costs charged in connection with such Default of the Contractor.

52.3 The Contractor may terminate the Agreement if the Council is in material breach of its obligations to pay undisputed charges by giving the Council 60 Working Days notice specifying the breach and requiring its remedy. The Contractor's right of termination under this clause 52.3 shall not apply to non payment of the charges or Price where such non payment is due to the Council exercising its rights under clauses 23.1 and 45.1(a).

53 Break

53.1 The Council shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving one Months' written notice to the Contractor.

54 Consequences of Termination

54.1 Where the Council terminates the Agreement under clause 52, or terminates the provision of any part of the Agreement under that clause 52, and then makes other arrangements for the provision of Services, the Council shall be entitled to recover from

the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Term or any Extension. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 52, no further payments shall be payable by the Council to the Contractor until the Council has established the final cost of making those other arrangements.

54.2 Where the Council terminates the Agreement under clause 53, the Council shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under 53.

54.3 The Council shall not be liable under clause 54.2 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Contractor under the Agreement, exceeds the total sum that would have been payable to the Contractor if the Agreement had not been terminated prior to the expiry of the Term.

55 Disruption

55.1 The Contractor shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.

55.2 The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.

- 55.3 In the event of industrial action by the Staff or the Contractor's suppliers the Contractor shall seek the Council's Approval to its proposals for the continuance of the performance of the Services in accordance with its obligations under the Agreement.
- 55.4 If the Contractor's proposals referred to in clause 55.3 are considered insufficient or unacceptable by the Council acting reasonably, then the Agreement may be terminated by the Council by notice in writing with immediate effect.

56 Recovery upon Termination

- 56.1 Save as otherwise expressly provided in this Agreement and notwithstanding the provisions of;
- (a) termination of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Council under clause 13 (Standard of Work), 23 (Recovery of Sums Due), 27 (Prevention of Corruption), 33 (Data Protection Act), 34 (Confidentiality), 37 (Publicity and Media), 38 (Security), 39 (Intellectual Property Rights), 40 (Audit), 46 (Remedies Cumulative), 48 (Indemnity and Insurance), 49 (Professional Indemnity), 50 (Warranties and Representations), 52 (Termination on Default), 54 (Consequences of Termination), 56 (Recovery on Termination) and 58 (Governing Law).
- 56.2 At the end of the Term (and howsoever arising) the Contractor shall forthwith deliver to the Council upon request all the Council's Property (including but not limited to materials, documents, information, access keys) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Council may recover possession thereof and the Contractor grants licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

- 56.3 At the end of the Term (howsoever arising) and/ or after the Term the Contractor shall provide assistance to the Council and any new contractor appointed by the Council to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress. Where the end of Term arises due to the Contractor's default, the Contractor shall provide such assistance free of charge. Otherwise the Council shall pay the Contractor's reasonable costs of providing the assistance, and the Contractor shall take all reasonable steps to mitigate such costs.

57 Force Majeure

- 57.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 6 Months, either Party may terminate the Agreement by notice in writing with immediate effect.
- 57.2 Any failure or delay by the Contractor in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 57.3 Clause 57 does not affect the Council's rights under clause 56.
- 57.4 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause 57.2 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 57.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

Part 9 – Dispute and Law

58 Governing Law

- 58.1 The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.

59 Dispute Resolution

- 59.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the finance director(or equivalent) of each Party.
- 59.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 59.3 If the dispute cannot be resolved by the Parties pursuant to clause 59.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 59.5 unless (a) the Council considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 59.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.
- 59.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
 - (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information

and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

60. Safeguarding The Contractor shall develop and maintain awareness and understanding of safeguarding issues with vulnerable adults, children and young people.

- 60.2 The Contractor shall ensure that all allegations, suspicions and incidents of abuse, harm or risk of harm to children and/or vulnerable adults or where there is concern about the behaviour of an individual are reported immediately to the Council's Representative and the Adult Social Care Team in respect of a vulnerable adult or the Children's Social Care Team in respect of a child. The Contractor's safeguarding policies and procedures should include active encouragement to staff in whistle blowing if aware of suspected abuse.
- 60.3 The Contractor shall ensure that children and/or vulnerable adults are safeguarded from any form of exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhumane or degrading treatment through deliberate intent, negligent acts or omissions.
- 60.4 The Contractor shall comply with all statutory obligations and Council and Government policies (including but not limited to the Council's Safeguarding Policy, Safeguarding Guidance for Providers and the South West Safeguarding Procedures) in respect of safeguarding as applicable and amended from time to time.
- 60.5 The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 60 have been met.

- 60.6 The Contractor must comply with any instruction given by the Council in respect of this clause 60
- 60.7 The Parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 60.8 The Contractor shall:
- a. ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service; and
 - b. monitor the level and validity of the checks under this clause 60 for each member of staff;
 - c. Not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users.
- 60.9 The Contractor warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 60.10 The Contractor shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service Users, children or vulnerable adults.
- 60.11 The Contractor shall ensure that all personnel engaged in the delivery of the Services regularly receive appropriate safeguarding training in relation to children and/or vulnerable adults in accordance with the Specification or as agreed by the Parties
- 60.12 The Contractor shall appoint an individual of sufficient seniority for the safeguarding of children and/or vulnerable adults. This individual shall be responsible for the implementation and monitoring of the Contractor's safeguarding policies and procedures in accordance with the terms of this Agreement.
- 60.13 The Contractor shall ensure that it operates a recruitment and selection procedure which aligns with the Council's safer recruitment and disciplinary standards and

which meets the requirements of legislation, equal opportunities and anti-discriminatory practice and ensures the protection of children and vulnerable adults

61 Whistleblowing

61.1 The Contractor shall:

- 61.1.1 have in place a process whereby its employees may report in confidence any alleged malpractice on the part of the Contractor as regards any part of the provision of the Services;
- 61.1.2 not take any action against any employee pursuant to its contractual rights in respect of that employee where such employee has in accordance with the process provided pursuant to clause 611.1 and in good faith reported alleged malpractice on the part of the Contractor

IN WITNESS whereof the Agreement has been signed and delivered as a deed on the date and year stated at the beginning of this deed.

THE COMMON SEAL of THE)
COUNCIL OF THE ISLES OF)
SCILLY was affixed in the)
presence of:

[Authorised] Signatory

THE COMMON SEAL of)
[CONTRACTOR] LIMITED was)
affixed in the presence of:)

Director/Company Secretary

SPECIFICATION SCHEDULE

Refer to Scope of Service (Section E above)

PRICING SCHEDULE

Costs should be inclusive of all transfer costs, labour, plant, equipment, fuel, regulatory fees, port fees, disposal costs and landfill taxation but should exclude, where applicable, VAT.

These calculations are solely for the evaluation of the contract, actual contract costs will be calculated on waste and recycling streams throughout the year.

| Contract Requirements | Estimated Weight | Gate Fee £/tonne | Transfer fee £/journey | Estimated Contract price per annum (based on estimated weights) |
|---|------------------|---------------------|---------------------------|--|
| Collection & haulage of 14yd compactor skip to suitable energy from waste facility and return of empty compactor skip to Penzance Quay. | | | | |
| Collection & haulage of load of Mill sized bales of recycling (Dry Mixed / Segregated) to suitable recycling facility. No return of pallets to Penzance Quay. | | | | |
| | | | | |
| Residual Waste (14 yd compactor skip) | 802 tonnes | | | |
| Dry Mixed Recycling (baled & wrapped) | 128 tonnes | | | |
| High Quality cardboard (baled & wrapped) | | | | |
| Flat glass (8yd enclosed skip) | 10 tonnes | | | |
| Plasterboard (8yd enclosed skip) | 1.5 tonnes | | | |
| Asbestos (8yd enclosed skip) | 1.5 tonnes | | | |
| Hazardous waste (TBC by contractor) | 1 tonne | | | |
| TOTAL ESTIMATED TOTAL CONTRACT VALUE FOR EVALUATION | | | | |
| Future Segregated Recycling (baled & wrapped) | | | | |

| | | | | |
|---|--|--|--|--|
| Food waste Estimated price for information and not included within the tender evaluation process | | | | |
|---|--|--|--|--|

COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

[insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive]