NORTHUMBERLAND

Northumberland County Council

Invitation to Tender for Collection, Treatment, Recovery and Disposal of Hazardous Waste and Interceptor Maintenance Programme

ITT Schedule 2

Part 1 – Contract Particulars

Part 2 - Standard Terms and Conditions of Contract

ITT SCHEDULE 2 - PART 1: THE CONTRACT PARTICULARS

Contract Particulars

Contract title	Tender for Collection, Treatment, Recovery and Disposal of Hazardous Waste and Interceptor Maintenance Programme
Council	NORTHUMBERLAND COUNTY COUNCIL
Contractor	Cleansing Services Group Ltd
Commencement Date	1st January 2015
Contract Period (including option to extend)	24 months 31st December 2016 + 2 x 12 month extensions
Services, Goods or Works	Services
Specification or description	See ITT Schedule 1: Specification
Address for Notice	**X**
Price	As per submitted pricing schedule

Council authorised officers		
Name	**Position**	**Contact details**
Stephen Wardle	**Waste Contracts Officer**	**01670 624430**
Peter Jeffreys	**Central Team Manager**	**01670 624428**

Contractor Manager	
Name	**Contact details**
X	

Contractor Key Personnel		
Name	**Position**	**Contact details**
X		

Insurance	
Insurance type	**Minimum level**
Employer's liability insurance	**£10 million**
Public liability insurance	**£5 million**

The following documents are incorporated into and form part of the Agreement:

1. **The Invitation to Tender issued by the Council (including Appendix 1)**
2. **The Standard Terms and Conditions; & Special Terms and Conditions**
3. **The Tender Response documents**

Signed by the duly authorised representatives of the parties:

Signed by _____

Print Name RICHARD BRWON (Brown)

Date 11TH DECEMBER 2014

duly authorised to sign for and on behalf of [name of contractor]

Signed by _____

Print Name PAUL JONES

Date 29/1/15

duly authorised to sign for and on behalf of the council

Signed by _____

Print Name T PALMER

Date 6/3/15

duly authorised to sign for and on behalf of the council

NORTHUMBERLAND COUNTY COUNCIL

PART 2: STANDARD TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE OF SERVICES

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NORTHUMBERLAND COUNTY COUNCIL

STANDARD TERMS AND CONDITIONS OF CONTRACT FOR THE PURCHASE OF SERVICES

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PART A - OPERATIVE PROVISIONS

A1. DEFINITIONS

The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

"Authorised Officer"	the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Contract in the Contract Particulars or as amended from time to time and in default of such notification the Council's head of procurement or similar responsible officer.
"Assigned Employees"	In respect of Clause G4 an individual employed by the Contractor wholly or mainly in the performance of the Services
"Business Day"	any day other than a Saturday or Sunday or a public or bank holiday in England.
"Change in Law"	the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
"Commencement Date"	the commencement date stated in the Contract Particulars.
"Confidential Information"	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 Services, the business, affairs, properties, assets, trading practices, 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 DPA).

"Contract"	the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority: 1. the Contract Particulars; 2. the Special Terms and Conditions; 3. the Standard Terms and Conditions; 4. the Tender except to the extent that any element of the Tender has been included in the Contract Particulars.
"Contractor"	the contractor and where applicable this shall include the contractor's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members.
"Contract Manager"	the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2.
"Contract Particulars"	the document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period, and the Specification and relevant contract specific details of the Tender included in the document.
"Contract Period"	the period of the contract as stated in the Contract Particulars (and any extension in accordance with clause B1).
"Control"	control as defined by section 416 of the Income and Corporation Taxes Act 1988.

"Council"	the Council named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression "control" shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
"DPA"	The Data Protection Act 1998.
"Delivery Instructions"	the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services.
"Employee"	any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of clause G4 (TUPE and Re-Tendering) and any other TUPE obligation, an individual employed by the Contractor in the performance of the Services.
"EIR"	The Environmental Information Regulations 2004.
"FOIA"	The Freedom of Information Act 2000.
"Force Majeure"	any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
"Good Industry Practice"	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the

	Contract.
"HRA"	The Human Rights Act 1998.
"Intellectual Property Rights"	patents, inventions, trade marks, service marks, logos, design rights (whether registrable 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 registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
"Invitation to Tender"	the Council's invitation to tender for the Contract.
"Key Personnel"	those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B6.1.5.
"Law"	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.
"Liabilities"	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
"Order"	an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off.
"Price"	the price of the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
"Pricing Schedule"	the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.

"Replacement Contractor"	any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Contract
"Services"	the services described in the Specification to be supplied by the Contractor in accordance with the Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services.
"Special Terms and Conditions"	the additional terms and conditions attached which were set out in the Invitation to Tender.
"Specification"	the specification included in the Contract Particulars setting out the Council's detailed requirements in relation to the Services.
"Standard Terms and Conditions"	the terms and conditions set out in this document.
"Tender"	the Contractor's tender for the Services in response to the Council's Invitation to Tender.
"TUPE"	The Transfer of Undertakings (Protection of Employment) Regulations 2006.

A1.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

A1.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

A2. HEADINGS

A2.1 The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

A3. NOTICES

A3.1 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.

A3.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

A4. ENTIRE AGREEMENT

A4.1 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

PART B - PROVISION OF SERVICES

2 CONTRACT PERIOD

B1.1 The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.

B1.2 If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.

B2. PERFORMANCE

B2.1 The Services shall be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the Services shall

be delivered between 9 a.m. and 5 p.m. on a Business Day.

B2.2 The time of the delivery of the Services is of essence to the Contract.

B2.3 The Council will have the right to observe the Contractor's performance of the Services if the Services are not being performed on the Council's premises.

B2.4 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.

B2.5 If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.

B2.6 If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.

B2.7 The Council retains the Contractor for the performance of the Services on a non exclusive basis.

B3. CONTRACT MANAGER

B3.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.

B3.2 The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.

B4. ORDERING PROCESS

B4.1 Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.

B4.2 Except where specified Orders are required to call off the Services the Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.

B4.3 The Orders shall state the type of or part of the Services required including the Council's requirements with regard to timescale for delivery of those Services.

B5. RISK IN AND TITLE TO GOODS

B5.1 Risk in any goods provided as part of the Services shall pass to the Council upon delivery without prejudice to any rights of rejection which may accrue to the Council under the Contract or otherwise.

B5.2 Title in any goods provided as part of the Services shall pass to the Council upon delivery or earlier payment.

B6. WARRANTY

B6.1 The Contractor warrants to the Council that the Services will be provided:

B6.1.1 in a proper, skilful and workmanlike manner;

B6.1.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;

B6.1.3 in accordance with the Contract and any descriptions provided by the Contractor;

B6.1.4 to the reasonable satisfaction of the Authorised Officer;

B6.1.5 by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Council, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Council, or the element of the Services in respect of which the individual was engaged has been completed to the

Council's satisfaction or other extenuating circumstances explained to the Council. Any replacements for the Key Personnel shall be subject to the agreement of the Council and 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. The cost of effecting such replacement shall be borne by the Contractor; and

B6.1.6 in a way that the Contractor takes every reasonable precaution to safeguard the Council's property entrusted to the care of the Contractor.

B6.2 The Contractor warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Services they will:

B6.2.1 be free from defects in design, material and workmanship; and

B6.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

B6.3 Without prejudice to the Council's rights to terminate under clause D1 (Termination), if any of the Services supplied are not in accordance with the Contract, the Council shall be entitled to:

B6.3.1 require the Contractor to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or

B6.3.2 subject to clause E2 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.

B7. CONTRACTOR'S EMPLOYEES

B7.1 The Council reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

B7.1.1 any member of the Contractor's Employees; and/or

B7.1.2 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.

B7.2 When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.

B7.3 The Contractor's Employees, 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.

B7.4 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.

B7.5 The Contractor shall replace any of the Contractor's Employees who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Employees for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

B7.6 The Contractor shall bear the cost of or costs arising from any notice,

instruction or decision of the Council under this clause.

PART C - PRICE AND PAYMENT

C1. PRICE AND PAYMENT

C1.1 The Council shall pay the Price for the Services to the Contractor.

C1.2 The Contractor shall submit a single VAT invoice to the Council no later than seven (7) days after the end of each calendar month detailing the Services provided during the calendar month and the amount payable.

C1.3 Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Council.

C1.4 The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council's satisfaction.

C1.5 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Co-operative Bank plc base rate from time to time. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.

C1.6 The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council's rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.

C1.7 Further details of payment, if any, are set out in the Pricing Schedule.

PART D - TERMINATION AND CONSEQUENCES OF TERMINATION

D1. TERMINATION

D1.1 Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:

D1.1.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or

D1.1.2 the Contractor is convicted of a criminal offence; or

D1.1.3 the Contractor ceases or threatens to cease to carry on its business; or

D1.1.4 the Contractor has a change in Control which the Council believes will have a substantial impact on the performance of the Contract; or

D1.1.5 there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Contract continuing; or

D1.1.6 the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or

D1.1.7 there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or

D1.1.8 the Contractor commits persistent minor breaches of this Contract

whether remedied or not.

D1.2 The Council reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7 and D1.1.8.

D1.3 Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.

D1.4 The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.

D2. CONSEQUENCES OF TERMINATION

D2.1 If this Contract is terminated in whole or in part the Council shall:

D2.1.1 be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or

D2.1.2 except for termination under clause D1.4, be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or

D2.1.3 where termination arises under clause D1.4, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination subject to the maximum liability provision in clause E2.4; and/or

D2.1.4 in the event that any sum of money owed by the Contractor to the Council (the Contractor's debt) exceeds any sum of money owed by the Council to the Contractor (the Council's debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Council's debt or to recover the Contractor's debt as a civil debt.

D2.2 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

D3. DISPUTE RESOLUTION PROCEDURE

D3.1 If a dispute arises between the Council and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

D3.2 If a dispute is not resolved within fourteen (14) days of referral under clause D3.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.

D3.3 Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.

D3.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

D4. SURVIVAL

D4.1 The following clauses will survive termination or expiry of the Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause F1 (Intellectual Property), Clause F2 (Confidentiality and Publicity), Clause F3 (Data Protection), Clause F4 (Freedom of

Information), Clause F5 (Record Keeping and Monitoring), Clause G4 (TUPE and Re-Tendering), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment) and Clause H12 (Law and Jurisdiction).

PART E - INSURANCE AND LIABILITIES

E1. INSURANCE

E1.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.

E1.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.

E1.3 If the Contractor does not maintain the necessary insurances under the Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.

E2. INDEMNITY AND LIABILITY

E2.1 Neither party seeks to exclude or limit its liability for:

E2.1.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);

E2.1.2 fraudulent misrepresentation; or

E2.1.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

E2.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.

E2.3 Subject to clauses E2.1, E2.2 and E2.5, the Contractor's liability to the Council under the Contract whether in contract, tort (including negligence) or

otherwise shall be limited to 125% of the proportion of the Price which is paid and payable at the time that the liability arises.

E2.4 Subject to clauses E2.1 and E2.2, the Council's liability to the Contractor under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid and payable at the time that the liability arises.

E2.5 The Contractor shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor's negligence, any defect or fault in the Services or any act or omission of the Contractor in delivering the Services.

PART F - PROTECTION OF INFORMATION

F1. INTELLECTUAL PROPERTY

F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

F1.1.1 provided to the Contractor by the Council shall remain the property of the Council;

F1.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.

F1.2 The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. 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 Councils, the replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.

F1.3 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all 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 the act or omission of the Council.

F1.4 At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.

F2. CONFIDENTIALITY AND PUBLICITY

F2.1 Any documents provided by the Council and information which the Contractor may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council.

F2.2 All Confidential Information provided by the Council to the Contractor shall be returned to the Council at the end of the Contract.

F2.3 Without prejudice to the Council's obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract 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).

F2.4 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Employees, sub-contractors, agents, professional advisors and consultants.

F3. DATA PROTECTION

F3.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the DPA.

F4. FREEDOM OF INFORMATION

F4.1 The Council is subject to the FOIA and the EIR ("the Acts"). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.

F4.2 The Contractor shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.

F5. RECORD KEEPING AND MONITORING

F5.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council's representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.

F5.2 The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council's procedures for monitoring of the Contract.

PART G - STATUTORY OBLIGATIONS

G1. HEALTH AND SAFETY

G1.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.

G2. CORPORATE REQUIREMENTS

G2.1 The Contractor shall comply with all obligations under the HRA.

G2.2 The Contractor shall comply with all Council policies and rules, such as, but

not limited to:

G2.2.1 equality and diversity policies;

G2.2.2 sustainability;

G2.2.3 information security rules;

G2.2.4 whistleblowing and/or confidential reporting policies; and

G2.2.5 all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services.

G2.3 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

G2.4 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.

G2.5 If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:

G2.5.1 details of the finding; and

G2.5.2 the steps the Contractor has taken to remedy the situation.

G3. LAW AND CHANGE IN LAW

G3.1 The Contractor shall comply at all times with the Law in its performance of the Contract.

G3.2 On the occurrence of a Change in Law which has a direct effect upon the

Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3.

G3.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

G4. TUPE AND RE-TENDERING

G4.1 In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.

G4.2 The Contractor authorises the Council to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant Employees in order to do this.

G4.3 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

PART H - GENERAL PROVISIONS

H1. CONTRACT VARIATION

H1.1 Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Contractor.

H1.2 The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of

emergency Services in accordance with revised Delivery Instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

H2. **THIRD PARTY RIGHTS**

H2.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

H3. **NO WAIVER**

H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

H3.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3 (Notices).

H4. **SEVERANCE**

H4.1 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

H5. **ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

H5.1 Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.

H5.2 The Council shall be entitled to:

H5.2.1 assign, novate or dispose of its rights and obligations under this

Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or

H5.2.2 transfer, assign or novate its rights and obligations where required by Law.

H5.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.

H6. FORCE MAJEURE

H6.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.

H6.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.

H6.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, services or materials and breach of the Contractor's warranties under clause B6 shall not be regarded as an event of Force Majeure.

H6.4 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.

H6.5 If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

H7. INDUCEMENTS

H7.1 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, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

H7.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Council by the Contractor or on the Contractor's behalf.

H7.3 Where the Contractor engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other contract with the Council, the Council has the right to:

H7.3.1 terminate the Contract 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 Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or

H7.3.2 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 Contract has been terminated.

H8. COSTS AND EXPENSES

H8.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

H9. NO AGENCY OR PARTNERSHIP

H9.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and

employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

H10. NON SOLICITATION AND OFFERS OF EMPLOYMENT

H10.1 The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:

H10.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or

H10.1.2 attempt, or knowingly assist or procure any other person to do the above.

H11. INSPECTION OF CONTRACTOR'S PREMISES

H11.1 The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to the Contract.

H12. LAW AND JURISDICTION

H12.1 This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.