

DATED

25th May 2017

**JOINT CONTRACT FOR WASTE COLLECTION AND STREET CLEANING SERVICES
(SURREY)**

between

ELMBRIDGE BOROUGH COUNCIL

MOLE VALLEY DISTRICT COUNCIL

WOKING BOROUGH COUNCIL

SURREY HEATH BOROUGH COUNCIL

and

AMEY LG LIMITED

VOLUME 1: TERMS AND CONDITIONS, SCHEDULES 1 – 3

(VOLUME 2 CONTAINS SCHEDULES 4 - 28 AND CD)

CONTENTS

CLAUSE

1.	Definitions and Interpretation	1
2.	Term	20
3.	Extending the Initial Term	20
4.	Extension of agreement to partner organisations	21
5.	Service Provider warranties	24
6.	Service Provider due diligence	27
7.	Preconditions	28
8.	Parent company guarantee.....	29
9.	Contract Management	30
10.	Mobilisation	30
11.	Supply of services.....	32
12.	KPIs	32
13.	Service standards	32
14.	Strategic objectives	33
15.	Compliance and EPA Duty of Care	34
16.	Health and Safety	34
17.	Equality.....	34
18.	Nuisance.....	35
19.	Premises, Depots and Stores.....	36
20.	Authorities' Premises: Grant of Lease(s).....	36
21.	Authorities' premises: Responsibility for Contamination	38
22.	Authorities' Premises: Condition Survey prior to service commencement date	39
23.	Authorities' Premises: Use and Management.....	39
24.	Authorities' Premises: Rates, Taxes and Utilities	40
25.	Authorities' Premises: Modifications	41
26.	Authorities' premises: Breach of repairing obligation	42
27.	Authorities' Premises: Works in Default	43
28.	Authorities' Premises: Surveys on Expiry	44
29.	Closure and/or Relocation of the Authorities' Premises.....	45
30.	Service Provider's ICT Infrastructure and Software Licensing.....	45
31.	Provision of Assets and Equipment.....	46
32.	Authorities' Financed Collection Vehicles.....	50
33.	Treatment of Assets in Event of Insolvency	55
34.	Branding	55
35.	Biodiversity and Environmental Protection	55
36.	Ownership of waste	56
37.	Service Continuity	56
38.	Authorities' Step-in Rights	57
39.	Payment	59
40.	Performance Deductions and Compensation Events.....	60
41.	Commercial Waste Collection Service.....	61
42.	Pre-priced optional Services	61

43.	Payment Disputes and Late Payments	62
44.	Set off	62
45.	Representatives.....	63
46.	Other personnel used to provide the services	63
47.	TUPE	64
48.	Reporting and meetings	65
49.	Monitoring	65
50.	Change control	65
51.	Change in law	65
52.	Mandatory separate collection arrangements.....	67
53.	Benchmarking and continuous improvement.....	68
54.	Dispute resolution	68
55.	Sub-Contracting and assignment	69
56.	Payment of Sub-Contractors	71
57.	Indemnities	71
58.	Limitation of liability	72
59.	Insurance.....	73
60.	Procurement Challenge.....	76
61.	Freedom of information.....	76
62.	Data protection	77
63.	Whistleblowing	77
64.	Confidentiality.....	79
65.	Right to Publish	79
66.	Audit.....	80
67.	Local Government Ombudsman	83
68.	Intellectual property	83
69.	Termination for breach	84
70.	Termination on notice.....	86
71.	Change of Control	88
72.	Force majeure	88
73.	Prevention of bribery	89
74.	Exit management	90
75.	Evidence in connection with legal proceedings	93
76.	Non-solicitation	93
77.	Waiver	93
78.	Rights and remedies.....	93
79.	Severability.....	93
80.	Partnership or agency	94
81.	Non-Fetter.....	94
82.	Third party rights.....	94
83.	Publicity.....	95
84.	Notices	95
85.	Entire agreement	96
86.	Counterparts	96
87.	Governing law	96

88.	Jurisdiction	96
-----	--------------------	----

SCHEDULE

SCHEDULE 1	SPECIFICATION	97
------------	---------------------	----

SCHEDULE 2	PRICING SCHEDULE	98
------------	------------------------	----

SCHEDULE 3	PERFORMANCE REGIME	99
------------	--------------------------	----

1.	Definitions	99
2.	The KPIs	101
3.	Satisfaction Surveys	104
4.	Street Cleaning	105
5.	Litter and detritus Surveys	105
6.	Remediation notices	106
7.	Non-exclusive remedy	107
8.	Mobilisation	107
9.	Change control – Street Cleaning	109

SCHEDULE 4	SERVICE PROVIDER'S TENDER	111
------------	---------------------------------	-----

- Method Statement 1 – Management and Culture
- Method Statement 2 – Monitoring and Information
- Method Statement 3 – Capacity and Resource (Note: Appendix 1 Resources Table and Assets Table is on the CD at the back of volume 2 of the Contract)
- Method Statement 4 – Service Delivery (note: Amey Waste Flow model forming part of this Method Statement is on the CD at the back of volume 2 of the Contract)
- Method Statement 5 – Service Delivery Method (Health and Safety)

SCHEDULE 5	not used	112
------------	----------------	-----

SCHEDULE 6	CONTRACT INCEPTION REPORT	113
------------	---------------------------------	-----

SCHEDULE 7	CHARGES AND PAYMENT	114
------------	---------------------------	-----

1.	Definitions	114
2.	Calculation of the Charges	114
3.	Annual management payment	115
4.	Calculation of the Annual Sums Service Payment (Unit Based)	116
5.	Calculation of the Annual Sums Service Payment (annual sum)	117
6.	Delivery site Change adjustments	117
7.	Changes to charges	118
8.	Annual baseline activity adjustments	118
9.	Indexation	118
10.	Limit on Service Provider profit margin	120
11.	Authorities' premises Change adjustments	121

SCHEDULE 8	FINANCIAL REPORTS	123
------------	-------------------------	-----

1.	Definitions	123
2.	Financial transparency objectives	125

3.	Open book data.....	126
4.	Provision of the financial reports.....	126
5.	Financial model	128
6.	Discussion of quarterly contract reports and final reconciliation report.....	129
7.	Key sub-contractors	129
SCHEDULE 9 CONTRACT MANAGEMENT.....		131
1.	Authorised representatives.....	131
2.	Contract management structure.....	131
3.	Performance reporting.....	132
4.	Service Report	133
5.	Annual service report	134
6.	Annual service improvement plan	134
7.	Performance records.....	134
8.	Performance verification.....	135
SCHEDULE 10 SERVICE CONTINUITY PLAN		136
SCHEDULE 11 CHANGE CONTROL.....		144
1.	General principles	144
2.	Procedure.....	144
SCHEDULE 12 BENCHMARKING		147
1.	Interpretation.....	147
2.	Benchmark Review.....	147
3.	Purpose and scope of benchmark review	148
4.	Appointment of Benchmarker	149
5.	Benchmarking process	149
6.	Benchmark report	151
SCHEDULE 13 EXIT MANAGEMENT PLAN		152
SCHEDULE 14 TUPE (SECOND GENERATION TRANSFER).....		158
SCHEDULE 15 TUPE (FIRST GENERATION OUTSOURCING)		170
SCHEDULE 16 PRE-CONTRACT ASSUMPTIONS.....		172
Appendix 1: Data		
Appendix 2: Pre-Contract Assumptions		
SCHEDULE 17 PARENT COMPANY GUARANTEE.....		176
SCHEDULE 18 FORM OF PERFORMANCE BOND.....		185
SCHEDULE 19 COMMERCIALLY SENSITIVE INFORMATION		187
SCHEDULE 20 AUTHORITIES' PREMISES AND ASSETS		189
Leases from each Council		

SCHEDULE 21	PRESS PROTOCOL.....	190
SCHEDULE 22	FORM OF ADMISSION AGREEMENT.....	194
SCHEDULE 23	FORM OF PENSION BOND AND INDEMNITY AND FORM OF PENSION GUARANTEE	195
SCHEDULE 24	FORM OF JOINING AGREEMENT	196
SCHEDULE 25	CONTINGENCY MOBILISATION PLAN	197
SCHEDULE 26	FAST TRACK DISPUTE RESOLUTION PROCEDURE.....	199
SCHEDULE 27	AUTHORITIES' FINANCED VEHICLES.....	201
SCHEDULE 28	VESTING CERTIFICATE	202

THIS AGREEMENT is dated

25th May 2017

PARTIES

- (1) Elmbridge Borough Council of Civic Centre, High Street, Esher, Surrey KT10 9SD (**EBC**)
 - (2) Mole Valley District Council of Pippbrook, Dorking, Surrey, RH4 1SJ (**MVDC**)
 - (3) Surrey Heath Borough Council of Surrey Heath House, Knoll Road, Camberley, Surrey GU15 3HD (**SHBC**)
 - (4) Woking Borough Council of Civic Offices, Gloucester Square, Woking, Surrey, GU21 6YL (**WBC**)
- (each an **Authority** and together the **Authorities**).
- (5) Amey LG Limited incorporated and registered in England and Wales with company number 03612746 whose registered office is at The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ (**Service Provider**).

BACKGROUND

- (A) The Authorities, having entered into an inter-authority agreement in 2014 (**Inter-Authority Agreement**) sought proposals for the provision of waste collection and street cleaning services by means of a public tender exercise. The Authorities placed a contract notice reference 170403-2015 on 16 May 2015 (**Contract Notice**) in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of waste collection and street cleaning services.
- (B) The Authorities have, through a competitive process, selected the Service Provider to provide these services and the Service Provider is willing and able to provide the services in accordance with the terms and conditions of this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Acceptance Criteria: the list of materials deemed to be acceptable for collection for recycling as notified from time to time by the Authorities to the Service Provider.

Achieved KPIs: in respect of any Service in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 3).

Additional Instructed Collection: an instruction by the Authorised Officer to the Service Provider to return to collect any Contract Waste as is more particularly set out in paragraph 32 of the Specification.

Administering Authority: is defined in Schedule 14.

Admission Agreement: is defined in Schedule 14.

Adopted Highway: the length and extent of a public highway which has been adopted and is maintainable at public expense by the highway authority.

Aggravated Contamination: has the meaning set out in clause 21.1

Agreed Collection Point: the Collection Point notified to the Service Provider by the Authorised Officer and which is not the default Collection Point in accordance with paragraph 33 of the Specification.

Annual Contract Value: the value of the Charges payable to the Service Provider by the Authorities (less the Commercial Waste Collection Service Income (if any)) in each Contract Year.

Annual Service Improvement Plan: the report provided by the Service Provider to the Authorities in accordance with Schedule 9 (Contract Management) as more particularly described in the Service Provider's Tender (Method Statement 1).

Annual Service Report: the report provided by the Service Provider to the Authorities in accordance with Schedule 9 (Contract Management) as more particularly described in the Service Provider's Tender (Method Statement 1).

Annual Subscription Fee: the annual subscription fee payable by a Service User to participate in a chargeable Service, such as Garden Waste.

Assets: any assets (including but not limited to sites, depots, Collection Vehicles, plant, equipment, consumables, ICT, communications equipment and other vehicles) required by the Service Provider in order to provide the Services in accordance with this agreement. "Assets" does not include people.

Assets and Equipment Register: the register of Assets and any other equipment used in the provision of the Services including details of their location and condition (and as shall be updated and/or amended from time to time in accordance with this agreement).

Associated Company: any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company.

Authorised Officer: the officer designated as such by the Authorities, the first such person being set out in Schedule 9 and the term 'Authorities' Authorised Officer' shall be construed accordingly.

Authorised Representatives: the Authorities' Authorised Officer and the Service Provider's Representative.

Authority Area: the administrative boundary area of an Authority.

Authorities' Area: the aggregate of the administrative boundary area of each of the Authorities.

Authorities' Assets: any Authorities' Financed Vehicles, street cleaning equipment, materials, other plant or equipment owned or held by any one of the Authorities, or an Authorities' Related Party on behalf of the Authorities, and provided by the Authorities or by an Authorities' Related Party on behalf of the Authorities, as the case may be, to the Service Provider for use in providing the Services.

Authorities' Data: means any data, document or information howsoever stored which is communicated in writing, orally, electronically or by any other means by the Authorities to the Service Provider or is obtained or gleaned by the Service Provider from the Authorities during the Term. "Authorities' Data" shall further mean any information, data or document which is compiled for the Authorities by the Service Provider during the Term including, subject to the final solution agreed by the Authorities and the Service Provider in relation to the Commercial Waste Collection Service, the data relating to the users and agreements in relation to Commercial Waste Collection Service but excluding the Service Provider's Corporate IPR.

Authorities' Financed Vehicles: those vehicles listed in Schedule 27 as may be updated pursuant to clause 32.23.

Authorities' Premises: the premises identified in Schedule 20 and which are to be made available for use by the Service Provider for the provision of the Services on the terms set out in this agreement and the term Authority Premises means any one of them.

Authorities' Related Party: the entity incorporated as a private limited company which is wholly owned by the Authorities in equal shares and which has as its purpose the provision of contract management services to the Authorities as more particularly detailed in the Joint Contract Inter Authority Agreement.

Authorities' Strategic Objectives: are set out in clause 14.1 and paragraph 6.3 of the Specification.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Bring Site: a local recycling site for communal use and which is typically located in car parks or roadside verges.

Bulky Waste: an item of household waste which cannot fit into a wheeled bin Container.

Catastrophic Failure

- (a) a failure by the Service Provider for whatever reason to implement the Service Continuity Plan successfully and in accordance with its terms on the occurrence of a disaster or business interruption.
- (b) any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authorities' Authorised Officer has or may cause significant harm to the reputation of the Authorities, or any one of them.

Change: any change to this agreement including to any of the Services (including the provision of new Services).

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change Control Procedure: the procedure for changing this agreement, as set out in Schedule 11.

Change in Law: the coming into effect after the date of this agreement of:

- (a) legislation, other than legislation which on the date of this agreement has been publicised:
 - (i) in a draft bill as part of a government department consultation paper;
 - (ii) in a bill;
 - (iii) in a draft statutory instrument;
 - (iv) as a proposal in the Official Journal of the European Union;
- (b) in any statutory or other official guidance;
- (c) any applicable judgement of a relevant court of law which changes a binding precedent or interprets or re-interprets legislation.

Charges: the charges which shall become due and payable by the Authorities to the Service Provider in respect of the Services in accordance with the provisions of this agreement, by reference to the Pricing Schedule set out in Schedule 2 and in accordance with Schedule 7.

Cleaning Performance Standards: the Grade A standard as set out in the Code of Practice on Litter and Refuse (2006) as set out in paragraph 48.3.6 of the Specification.

Clinical Waste: as defined in Schedule 1 of the The Controlled Waste (England and Wales) Regulations 2012.

Collection Point: the place from which a waste or recycling collection shall be made and to which the Container/Sack should be returned as specified in the Specification.

Collection Vehicles: vehicles which are necessary for the performance of the Services.

Commercially Sensitive Information: the information (a) listed in Schedule 19 comprising the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or (b) notified to the Authorities in writing prior to any Service Commencement Date which the Service Provider has clearly marked as Commercially Sensitive Information comprised of information:

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

Commercial Waste: as defined in Schedule 1 of the The Controlled Waste (England and Wales) Regulations 2012.

Commercial Waste Collection Service: those services relating to Commercial Waste collection to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in the Specification as supplemented by the Service Provider's Tender.

Commercial Waste Collection Service Income: shall be the Commercial Waste Collection Service Income proposal set out in Schedule 2 (Pricing Schedule) and Schedule 4 (Service Provider's Tender) and reviewed annually in accordance with Schedule 7 paragraph 10 (Indexation) which shall become due and payable by the Service Provider to the Authorities in respect of the Commercial Waste Collection Service in accordance with the provisions of this agreement.

Communal Bin Properties: are households, high rise flats or other low level blocks, which are eligible for communal collections of waste and recycling from bin stores or bin areas.

Compensation Event: shall be the events set out in clause 40.2.

Consistent Failure: shall have the meaning set out in Schedule 3.

Container: bin or bag designated for a particular class of material and the term **Container** in Schedule 3 shall also include Sacks.

Contamination: all or any pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour).

Contract Inception Report: is defined in Schedule 8 and is set out at Schedule 6.

Contract Notice: the contract notice reference 170403-2015 on 16 May 2015 placed by the Authorities in the Official Journal of the European Union.

Contract Partnering Board: the forum of that name, the membership and functions of which are set out in Schedule 9.

Contract Waste: all waste collected received or in the possession of the Service Provider arising out of the performance of the Services.

Contract Year: a period of 12 months, commencing on 1 April and ending on 31 March in each year during the Term, save in respect of the first Contract Year, which shall commence on the Effective Date and shall end on 31 March 2018 and in respect of the last Contract Year which shall end on the Termination Date.

Contrary Materials: materials which do not comply with the Acceptance Criteria.

Curtilage Collection: as described in paragraph 33.1 of the Specification, the area within the property boundary and at the edge of the property boundary adjacent to, but not on, the highway.

Data Processor: shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Dayworks Unit Rates: are the rates given in the Pricing Schedule (Schedule 2) for those items in section 28 (Additional Labour – Employed during Normal Working Hours), section 29 (Additional Labour – Employed Outside Normal Working Hours – Overtime) and section 30 (Vehicles/Plant).

Delivery Sites: the location(s) designated by the Authorities to which the Service Provider shall deliver all waste collected, received or in its possession arising out of the performance of the Services.

Disposal List: has the meaning set out in clause 32.30.

Dispute: has the meaning set out in clause 54.1.

Dispute Notice: has the meaning set out in clause 54.2(a).

Dispute Resolution Procedure: the procedure set out in clause 54.

Draft Descriptive Document: the document of that name issued by the Authorities with the Contract Notice.

Dry Recycling: those materials designated as dry recycling materials as notified from time to time by the Authorities to the Service Provider.

Effective Date: the date of this agreement.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Elmbridge Commencement Date: in relation to the Services to be provided in the EBC Authority Area, Saturday 3 June 2017, unless otherwise notified to, and agreed by, the Service Provider.

Emergency Plan: a document or set of documents setting out an Authority's arrangements in an emergency.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Service Provider arising out of the employee's employment with the transferor;
- (e) information about any collective agreement that will have effect after the Service Commencement Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

EPA: Environmental Protection Act 1990.

Excess Dry Recycling: Dry Recycling which is not placed in a designated Container.

Excess Residual Waste: Residual Waste which is not placed in a designated Container.

Exit Management Plan: the plan set out in Schedule 13.

Extension Period: has the meaning set out in clause 3.1.

Fast Track Dispute: is any Dispute that the parties agree is appropriate to be resolved under a fast track process or which is expressly stated in the agreement to be resolved in accordance with the Fast Track Dispute Resolution Procedure.

Fast Track Dispute Resolution Procedure: is the procedure set out in Schedule 26.

Financial Reports: the financial reports prepared by the Service Provider in accordance with the provisions in Schedule 8.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Food Waste: waste food, including vegetables, meat, fish, shells and bones.

Food Waste Kerbside Container: container for Food Waste.

Force Majeure: war, civil commotion, civil war, fuel shortage, acts of terrorism, armed conflict, nuclear chemical or biological contamination, hurricane, flooding to the extent that residents are evacuated or which renders a depot, an Authorities' Premises or Delivery Site inaccessible by a Collection Vehicle for more than 24 hours, or earthquake but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain.

Garden Waste: waste produced from garden activities including plant material/compost and which satisfies the Acceptance Criteria.

Garden Waste Administration Service: those services relating to the administration of Garden Waste collection service (a subscription service) which may be provided by the Service Provider under this agreement in one or more Authority Area, as more particularly described in paragraphs 10.10-10.13 of the Specification and as supplemented by the Service Provider's Tender.

Good Industry Practice: the standards which fall within the upper two quartiles in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors.

Guarantee Criteria: have the meaning set out in clause 8.3.

Guarantor: the party defined as the Guarantor in the Parent Company Guarantee granted in favour of the Authorities.

Health and Safety Policy: the health and safety policy of the Authorities as provided to the Service Provider on or before the Elmbridge Commencement Date and as subsequently provided to the Service Provider from time to time

except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

Highway Authority: as defined in section 1 of the Highways Act 1980.

Historic Contamination: Contamination at or under any of the Authorities' Premises arising on or before the date of the applicable Lease excluding Aggravated Contamination.

Incumbent Contractor: a contractor engaged to provide some or all of the Services to any one of the Authorities before the relevant Service Commencement Date and whose employees will transfer to the Service Provider on the relevant Service Commencement Date.

Indexation: the adjustment of a value to reflect changes in the applicable indices as more particularly set out in Schedule 7 paragraph 10 and the term **Indexed** shall be construed accordingly.

Individual Charges: those Charges designated as such by the Authorities to the Service Provider.

Information: has the meaning given under section 84 of FOIA.

Information Technology System (ITS): the information and communications technology solution set out in the Service Provider's Tender in Schedule 4, or as may be changed in accordance with the Change Control Procedure.

Initial Inventory: those items of equipment which the Service Provider has promised to provide in accordance with the Service Provider's Tender.

Initial Term: the period commencing on the Effective Date and ending on and including Saturday 5 June 2027.

Insolvency Event: where:

- (a) the Service Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) the Service Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Service Provider with one or more other companies or the solvent reconstruction of that other party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Service Provider;
- (e) the holder of a qualifying floating charge over the assets of the Service Provider has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Service Provider or a receiver is appointed over the assets of the Service Provider;
- (f) a creditor or encumbrancer of the Service Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (g) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive);
- (h) the Service Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Joining Agreement: the agreement in the form set out in Schedule 24, the execution of which results in a Partner Organisation becoming a party to this agreement.

Joint Contract Inter-Authority Agreement (or IAA): the inter-authority agreement recording the liabilities rights and obligations, and the roles and responsibilities between the Authorities in relation to this agreement, to which a Partner Organisation may accede as a condition of that Partner Organisation receiving Services from the Service Provider under this agreement.

Key Performance Indicators (KPIs): the key performance indicators set out in Schedule 3, as may subsequently be varied from time to time in accordance with the provisions of this agreement.

Kitchen Caddy: a plastic lidded Container.

Law: any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body.

Lease: the lease, substantially in the form set out in Schedule 20 or as otherwise agreed between the parties to it, granted by an Authority to the Service Provider in respect of an Authorities' Premises.

Litter Code: the current version of the Code of Practice issued by the Secretary of State under section 89(7) EPA which provides guidance to the Authorities' on the performance of their statutory duties under section 89 EPA.

Local Performance Indicators: the local performance indicators set out in the Service Provider's Tender (Method Statement 2) in Schedule 4.

Maximum Operational Hours: has the meaning given to it in paragraph 36 of the Specification.

Modification(s): in relation to the Authorities' Premises, has the meaning given to it in clause 25.1.

MVDC Waste Collection Commencement Date: in relation to the Services (with the exception of street cleaning Services) to be provided in the MVDC Authority Area, 1 April 2018 in relation to Clinical Waste, otherwise 5 August 2018, unless otherwise notified to, and agreed by, the Service Provider.

MVDC Street Cleaning Commencement Date: in relation to the street cleaning Services to be provided in the MVDC Authority Area, 1 April 2019 unless otherwise notified to, and agreed by, the Service Provider.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

New Contamination: has the meaning given to it in clause 21.2.

NNDR: the uniform business rate payable in accordance with s.43 Local Government Finance Act 1988, known as the National Non-Domestic Rate.

Open Book Data: is defined in Schedule 8.

Other Non-Domestic Sources: sources of waste which are defined as non-domestic in the EPA as supplemented by the Controlled Waste (England and Wales) Regulations 2012.

Other Recycling Materials: has the meaning given to it in paragraph 23.7 of the Specification.

Outstanding Work: in relation to the Authorities' Premises, has the meaning given to it in clause 28.5.

Parent Company Guarantee: has the meaning given to it clause 8.1.

Partner Organisation: any of those contracting authorities (as defined in the Public Contract Regulations 2015) which is a waste collection authority (as defined in section 30(3) of the Environmental Protection Act 1990) and who has waste collection duties within the geographical area of Surrey and named in the Contract Notice.

Partner Organisation Initial Notice: has the meaning set out in clause 4.2.

Pension Bond and Indemnity: the pension bond in the Administering Authority's standard form set out in Schedule 23.

Pension Guarantee: the pension guarantee in the Administering Authority's standard form set out in Schedule 23.

Performance Deduction: the sums attributable to a Service Failure as specified in Schedule 3.

Performance Management Reports: the reports to be prepared and presented by the Service Provider in accordance with clause 48 and Schedule 9.

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998.

Press Protocol: the press protocol set out in Schedule 21.

Pricing Schedule: the schedule of prices, rates and fees set out in Schedule 2.

Priority Zone: denotes the classification of an area for the purposes of street cleaning and is more particularly detailed in Table 2 at paragraph 48.4 of the Specification.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authorities, or any one of them, a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation or common law concerning fraudulent acts;

- (iii) defrauding, attempting to defraud or conspiring to defraud the Authorities, or any one of them.
- (d) any activity, practice or conduct which would constitute one of the offences listed under clause (c) above if such activity, practice or conduct had been carried out in the UK.

Qualifying Change in Law: a Change in Law coming into effect after the date of this agreement which was not foreseeable as at the date of this agreement which applies to the provision of services which are the same as or similar to the Services.

Rectification Period: a period of time (including an allowance for recording completion in the Service Provider's ITS) granted by the Authorities to the Service Provider to complete the rectification of a reported service failure.

Register of Adopted Highways: a register of Adopted Highways held by the highway authority, which is Surrey County Council in relation to the Authorities' Area.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.

Remediation Notice: a notice served by the Authorities in accordance with clause 69.1(a) or Schedule 3 (Performance Management).

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Authorities, or any one of them, receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authorities, or any one of them, internally or by any Replacement Service Provider.

Replacement Service Provider: any third party supplier of Replacement Services appointed by the Authorities, or any one of them, from time to time.

Reprocessor's Site: a Delivery Site at which Contract Waste is processed.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Required Insurances: has the meaning set out in clause 59.1.

Required Standard: in relation to Authorities' Premises, has the meaning set out in clause 23.2(e).

Residual Waste: waste which is not classified by the Authorities as recycling and which is disposed of by householders in designated Containers/Sacks.

Reusable Garden Waste Sack: pliable reusable Sack for Garden Waste.

Sack: flexible single use container for designated material.

Schedule of Condition: the photographic schedule of condition marked 'Schedule of Condition' signed by the parties annexed to each of the Leases entered into between the Service Provider and any one of the Authorities in relation to any of the Authorities' Premises.

Scheduled Collection: a planned collection of material (and collections of a material should take place on the same day each week as specified in paragraph 31 of the Specification).

Scheduled Collection Day: a day on which a Scheduled Collection is to occur.

Service Commencement Date: in respect of each of the Authorities, the date on which the Service Provider commences the provision of the Services, the first such date being the Effective Date (in relation to mobilisation), followed by the Elmbridge Commencement Date, the Woking Commencement Date, the Surrey Heath Commencement Date, the MVDC Waste Collection Commencement Date and the MVDC Street Cleaning Commencement Date.

Service Continuity Plan: a plan produced by the Service Provider which sets out the procedures to be adopted by the Service Provider designed to ensure that the Services are maintained in accordance with the Specification and Good Industry Practice in the event of a business interruption or a disaster (including the procedures to be taken by the Service Provider in planning and providing for any such event) and references to any Emergency Plan in relation to the Service Provider shall be construed as references to the Service Continuity Plan.

Service Delivery Plan: the name given to the five method statements comprised within the Service Provider's Tender at Schedule 4.

Service Failure: a failure by the Service Provider to provide the Services in accordance with any Target KPI.

Service Mobilisation Plan: a plan produced by the Service Provider which sets out the activities and plan to support for the Authorities and the Service Users (if applicable) to secure as far as is practicable a smooth and orderly transition of the Services from the relevant Incumbent Contractor to the Service Provider for each of the Authorities.

Service Performance Standards: the standards for the performance of the Services as detailed in the Specification.

Service Provider Assets: those assets provided by the Service Provider for the provision of the Services.

Service Provider's Corporate IPR: any Intellectual Property Rights created by or on behalf of the Service Provider (or its sub-contractors) in respect of, in each case, their:

- (a) brand names, trademarks, trade names, designs, logos, domain names and name;

- (b) know-how and business systems;
- (c) quality management procedures and customer care programme;
- (d) sales and customer retention products and processes;
- (e) corporate policies and training documentation;
- (f) intranet, integrated management system and supporting documentation; and
- (g) service delivery proposals,

but excluding any Service User or customer database relevant to the Services.

Seven Principles of Public Life: 'the seven Nolan principles', which are the basis of the ethical standards expected of public office holders, and which are listed in clause 14.1(h).

Service Provider Initial Response: has the meaning set out in clause 4.3.

Service Provider Full Response: has the meaning set out in clause 4.6.

Service Provider Party: the Service Provider's agents and contractors, including each Sub-Contractor.

Service Provider's Personnel: all employees, staff, other workers, agents and consultants of the Service Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Service Provider Representative: the person designated as such by the Service Provider, the first such person being set out in Schedule 9 and the term **Service Provider's Representative** shall be construed accordingly.

Service Provider's Tender: the tender submitted by the Service Provider in response to the Authorities' Invitation to Submit Final Tenders in relation to the opportunity to provide the Services (including the Service Delivery Plan and any supporting documents submitted by the Service Provider) and other associated documentation set out in Schedule 4.

Services Information: shall have the meaning set out in clause 4.5.

Service Report: the report produced by the Service Provider as more particularly detailed at paragraph 4 of Schedule 9.

Service Users: in respect of waste collection Services, householders or other legitimate users of the Services, and in respect of street cleaning Services, residents, businesses, visitors and others with a stake in the cleanliness of the Authorities' public realm.

Service Users' Contact Management Service: those services relating to the provision of Service User contact management services which may be provided by the Service Provider under this agreement in one or more Authority Area, as more particularly described in the Specification at paragraph 10.1-10.10

(Contact Management Service) and as supplemented by the Service Provider's Tender.

Services: the services to be delivered by or on behalf of the Service Provider under this agreement, as more particularly described in the Specification.

Single Use Sack: a disposable Sack for recycling or residual waste.

Specification: the Authorities' specification for the Services as set out in Schedule 1 as may be supplemented by the Service Provider's Tender set out in Schedule 4.

Step-In Rights: the rights of the Authorities' to take, or to engage other parties to take on its behalf, all such steps as the Authorities deem necessary to secure the provision of the Services in accordance with the Specification and this agreement following a Step-In Trigger Event.

Step-In Trigger Event:

- (a) any event or circumstance falling within the definition of an Insolvency Event or which entitles the Authorities to terminate all or part of this agreement;
- (b) a default by the Service Provider that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (c) a Force Majeure event that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (d) the Authorities consider that the circumstances constitute an emergency despite the Service Provider not being in breach of its obligations under this agreement;
- (e) the Authorities being advised by a regulatory body that the exercise by the Authorities of its rights under clause 38 (Step-In Rights) is required;
- (f) the existence of a serious risk to the health and safety of persons, property or the environment in connection with the Services; and/or
- (g) a need by the Authorities to take action to discharge a statutory duty.

Street Cleaning Area: those areas in the Authorities' Area which the Service Provider shall provide street cleaning Services.

Street Level Properties: are households – usually houses or low level flats - which are eligible for individual collections of waste and recycling.

Sub-Contract: any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or suppliers that enter into a Sub-Contract with the Service Provider.

Subscribing Households: has the meaning given to it in paragraph 25.1 of the Specification.

Surrey Heath Commencement Date: in relation to the Services to be provided in the SHBC Authority Area, 5 February 2018 unless otherwise notified to, and agreed by, the Service Provider.

Surrey Joint Municipal Waste Management Strategy: the jointly agreed strategy for the management of waste in Surrey pursuant to section 32 of the Waste and Emissions Trading Act 2003, the current version of which is revision 2 (2015).

Surrey Waste Partnership: the collaboration between the twelve waste authorities in Surrey.

Target KPI: the minimum level of performance for a KPI which is required by the Authorities as set out against the relevant KPI in Schedule 3.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this agreement.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

UPRN: unique property reference number.

USRN: unique street reference number.

Waste Disposal Authority: as defined in section 30(2) of the EPA and the term **WDA** shall be construed accordingly.

Wheeled Bin: a Eurobin – a bin with two or four wheels.

Woking Commencement Date: in relation to the Services to be provided in the WBC Authority Area, Monday 11 September 2017 or as otherwise notified to, and agreed by, the Service Provider.

Working Day: Monday to Friday, excluding any public holidays in England and Wales and references to a **Working Week** shall be construed accordingly, save that references to **Working Day** or **Working Hour** in relation to the Services as set out in the Specification and in Schedule 3 shall be construed to refer to any day (or any hour on any such day) on which any of the Services are to be delivered to Service Users and for the avoidance of doubt may include Saturday, Sunday and public holidays in England.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** excludes e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where any statement is qualified by the expression **so far as [PARTY] is aware** or **to [PARTY]'s knowledge** or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.14 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;

- (b) Schedule 1 to this agreement;
- (c) the remaining schedules to this agreement other than Schedule 4;
- (d) Schedule 4 to this agreement.

and the provisions of the Leases shall prevail over Schedule 4 of this agreement.

PARTNERSHIP

- 1.15 The Authorities shall be jointly and severally liable for the Charges and their obligations under this agreement save in respect of the Individual Charges which shall be several and in respect of which no Authority other than that to which the Individual Charge applies shall be liable under any circumstances.

PARTNERSHIP CHARTER

- 1.16 Any act, omission, decision, requirement, agreement, exercise of discretion or other step of any kind taken by either the Authorities or the Service Provider or the Authorities' Authorised Officer or the Service Provider's Representative shall be so taken reasonably, proportionately and in good faith and so as not to place an undue burden upon either party, and any reference (express or implied) to period, time, occasion, amount, price or any other matter shall be subject to the qualification of reasonableness, unless the context otherwise requires, and shall be presumed to be unless the contrary is proved.
- 1.17 The parties shall act in a spirit of mutual trust and co-operation, shall apply their respective specialist knowledge, skills and expertise to provide the Services which are, so far as practicable, approached in the best interests of the Surrey tax payer, and shall act in good faith towards each other in relation to all matters arising under this agreement (including but not limited to monitoring and managing the performance of the Services) and in particular:
- (a) the Service Provider will fully inform the Authorities, in writing and as soon as possible, of any circumstances which might prejudice the Service Provider's ability to provide the Services whether temporarily or permanently;
 - (b) the Authorities' Authorised Officer shall be given all information and other facilities he may require, to ensure that the Service Provider is fulfilling its obligations under this agreement, and
 - (c) each party shall fully inform the other, as soon as possible, of any circumstances which might lead to any substantial change in the Services or any other circumstance which might alter the burden of the obligations of each party under this agreement. For the avoidance of doubt there shall be no presumption that either party is entitled to any forbearance or variation of this agreement to reflect any such change.

COMMENCEMENT AND DURATION

2. TERM

This agreement shall take effect on the Effective Date and shall continue for the Term. The Service Provider shall commence the provision of the Services applicable to that Authority for each Authority on the relevant Service Commencement Date.

3. EXTENDING THE INITIAL TERM

- 3.1 The Authorities may, at their sole discretion, give written notice to the Service Provider of their desire to extend this agreement on the same terms beyond the Initial Term by a further period or successive consecutive periods (each such period an **Extension Period**) provided that this agreement may not be extended by more than fourteen years from the expiry of the Initial Term. If the Authorities wish to extend this agreement, they shall give the Service Provider not less than 18 months' written notice of such intention before the expiry of the Initial Term or the then applicable Extension Period.
- 3.2 The Service Provider shall, within 60 days of receipt of the notice issued by the Authorities pursuant to clause 3.1, confirm its acceptance or rejection of the offered extension to this agreement. Upon the Service Provider confirming that the extension is accepted this agreement will remain in full force and effect upon the same terms and conditions (as amended pursuant to this agreement) until the expiry of the Extension Period as may be further extended in accordance with clause 3.1 or as may be terminated earlier in accordance with the terms of this agreement.
- 3.3 If the Parties agree to extend this agreement pursuant to clauses 3.1 and 3.2, then the Term shall be extended by the period set out in the notice.
- 3.4 Any individual Authority may decide not to participate in an extension provided to do so would not be unlawful under the applicable procurement Law. The provisions of clause 74 (Exit Management) will apply and the Charges and Services to the other Authorities shall be adjusted using a mechanism similar, but in reverse, to clause 4 (Extension of Agreement to Partner Organisations).
- 3.5 For the avoidance of doubt, during any Extension Period the Charges shall only increase in accordance with the provisions of paragraph 10 (Indexation) of Schedule 7 (Charges and Payment) and as a consequence of the provisions of clause 3.4.

3.6 If the parties do not agree to extend this agreement beyond the Initial Term or the expiry of the then applicable Extension Period, this agreement shall expire on the expiry of the Initial Term or the then applicable Extension Period and the provisions of clause 74 shall apply.

3.7 Prior to the Authorities giving written notice to the Service Provider of their desire to extend this agreement in accordance with clause 3.1, the following provisions shall apply to refresh the Collection Vehicles:

- (a) the Service Provider shall on request provide the Authorities with a schedule in the same form as that provided at Schedule 27(Authorities' Financed Vehicles) setting out the number, estimated life and specification of the Collection Vehicles that require replacing as at expiry of the then applicable Term and the capital costs of purchasing such Collection Vehicles together with the cost of capital it would incur in purchasing and owning such Collection Vehicles;
- (b) the Authorities shall provide the Service Provider with the cost of capital their, or their nominee, would incur in purchasing such Collection Vehicles through the Service Provider and then leasing them back to the Service Provider; and
- (c) the Service Provider shall provide the Authorities with a revised Pricing Schedule together with an analysis and supporting information on an open book basis to substantiate the impact on the Charges of the Service Provider purchasing and owning such Collection Vehicles for the proposed Extension Period in lieu of the Authorities' purchasing and owning such Collection Vehicles on the same terms as those set out at clause 32.

3.8 When giving notice to the Service Provider in accordance with clause 3.1, the Authorities shall specify whether they or the Service Provider is to purchase and own the Collection Vehicles. If the Service Provider is to purchase and own the Collection Vehicle, the Pricing Schedule received under clause 3.7 shall apply and the Charges shall be determined in accordance with that Pricing Schedule during the Extension Period.

4. EXTENSION OF AGREEMENT TO PARTNER ORGANISATIONS

4.1 The parties agree and acknowledge that it was envisaged by the Contract Notice and the Draft Descriptive Document that each and any of the Partner Organisations shall be entitled to become parties to this agreement at its discretion at any time during the Term. The following mechanism shall apply to the joining of the Partner Organisations.

- 4.2 The Authorised Officer shall in the first instance notify the Service Provider that a Partner Organisation wishes to become a party (**Partner Organisation Initial Notice**). The Partner Organisation Initial Notice shall state:
- (a) the name of the Partner Organisation;
 - (b) any specific service requirements or issues;
 - (c) any Assets relevant to the Services which the Partner Organisation can make available to the Service Provider (but such information shall not be warranted or deemed exhaustive);
 - (d) its anticipated service commencement date;
 - (e) indicative baseline activity data for its administrative area;
 - (f) details of any Partner Organisation premises, schedule of condition and up-to-date open market rental valuation prepared by an independent valuer;
 - (g) anonymised Employee Liability Information for those employees of that Partner Organisation's Incumbent Contractor (which for the avoidance of doubt may be that Partner Organisation's direct service organisation) and any other employees of the Partner Organisation who would be eligible to transfer to the Service Provider under TUPE.
- 4.3 The Service Provider shall respond in writing to the Partner Organisation Initial Notice (**Service Provider Initial Response**) within one month setting out and providing:
- (a) that it acknowledges the Partner Organisation's intention;
 - (b) an outline mobilisation plan;
 - (c) an outline service delivery plan
 - (d) an impact statement setting out any ways in which the Services to the Authorities will require adjustment;
 - (e) an indication of cost (calculated by reference to Schedule 2 (Pricing Schedule); and
 - (f) a fixed one off cost to prepare a Full Service Provider Full Response (the **Full Response Fee**).
- 4.4 The Service Provider shall not at this stage make direct contact with the Partner Organisation and shall prepare the Service Provider Initial Response at its own cost and expense.
- 4.5 On receipt of the Service Provider Initial Response, the Partner Organisation may decide not to proceed or shall (within 3 months) submit to the Service Provider the Services Information which shall be the categories of matters outlined in the Partner Organisation Initial Notice but expanded, confirmed as

being accurate and the basis on which the Service Provider shall prepare the Service Provider Full Response in accordance with clause 4.6.

- 4.6 The Service Provider shall prepare the Service Provider Full Response within 3 months which shall comprise of the categories of matters in (a) to (e) of the Service Provider Initial Response but augmented, confirmed and comprising of an offer capable of acceptance to be incorporated into the agreement if the Partner Organisation proceeds.
- 4.7 Within 6 months of receipt of the Service Provider Full Response the Authorities shall:
- (a) notify the Service Provider that the Partner Organisation wishes to proceed in which case all parties and the Partner Organisation shall execute the IAA and the Joining Agreement (incorporating the Service Provider Full Response and the Services Information) within 30 days unless a later date is agreed between them; or
 - (b) reject the Service Provider Full Response and pay the Full Response Fee within 30 days.
- 4.8 In preparing the Partner Organisation Initial Notice, the Service Provider Initial Response, the Services Information and the Service Provider Full Response, the parties acknowledge that they must not depart in any material way from this agreement and its terms, introduce any new material risks or prices or change the scope. All parties acknowledge the intention to remain within the ambit of Regulation 72 (1) (a) of the Public Contract Regulations 2015.
- 4.9 Neither the Authorities nor the Partner Organisations give any undertaking or assurance at any time that any Partner Organisation will join the agreement. The Authorities' liability in respect of the preparation of the Service Provider Initial Response and the Service Provider Full Response shall be the Full Response Fee and nothing more.
- 4.10 Any dispute under this clause 4 shall be referred to the Dispute Resolution Procedure. If it is determined or agreed that a Partner Organisation has suffered any loss as a result of the Service Provider's breach of this clause 4, that Partner Organisation shall be entitled to claim damages for breach of contract against the Service Provider in respect of this clause 4 only. Such damages may include for the avoidance of doubt but without limitation the costs of continuing with an existing arrangement longer than would have been the case if the Partner Organisation could have joined this agreement sooner but for the failure of the Service Provider to comply with this clause 4.
- 4.11 As part of and consequent on the Joining Agreement and successful implementation of the requested Services:

- (a) any additional charges for the mobilisation costs for the Partner Organisation and for the provisions of the requested Services to the Partner Organisation shall be incorporated in the Charges as specified in Schedule 7 (Charges and Payment);
- (b) any adjustment to the Charges as detailed in the Service Provider Full Response shall be incorporated into the Pricing Schedule at Schedule 2;
- (c) any Service Levels and KPIs concerning the requested Services shall be incorporated in Schedule 3 (Performance Regime);
- (d) all details of the requested Services as agreed and implemented together with any non-substantial amendments to the terms and conditions in this agreement agreed for the requested Services shall be clearly set out in a specific additional schedule. The schedule shall be deemed to have been duly incorporated into and as forming part of this agreement; and
- (e) the relevant requested Services implemented in accordance with this clause 4 shall become part of the Services for the purpose of all other sections, clauses, obligations and rights contained within this agreement.

4.12 The Authorities do not guarantee that any Services will be required to be provided by the Service Provider to any Partner Organisation under this agreement and nothing in this agreement shall give the Service Provider a right to receive this requirement for providing Services.

4.13 It shall be the responsibility of any Partner Organisation that requires the provision of any Services to satisfy itself that it would not, in doing so, be in breach of any relevant public procurement regulations or offend against general European Community procurement principles.

4.14 A Partner Organisation may express an interest at any time during the term of this agreement, but a period of no less than two years shall elapse between each such expression of interest, unless otherwise agreed by the Authorities, after consultation with the Service Provider.

5. **SERVICE PROVIDER WARRANTIES**

5.1 The Service Provider warrants, represents and undertakes to the Authorities on the date of this agreement and subsequently on each of the Service Commencement Dates that:

- (a) it is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation;

- (b) it has the power to own its assets and carry on its business as it is being conducted;
- (c) it has the power to enter into, and to deliver and perform its obligations under this agreement, and has taken all necessary action to authorise its entry into, and delivery and performance of its obligations under this agreement;
- (d) the entry into and performance by it of, and the obligations contemplated by, this agreement do not and will not contravene or conflict with:
 - (i) its constitutional documents;
 - (ii) any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
 - (iii) any law or regulation or judicial or official order, applicable to it;
- (e) no litigation, arbitration or administrative proceedings are taking place, pending or, to the best of the Service Provider's knowledge, threatened against it, any of its directors or any of its assets, which, if adversely determined, might reasonably be expected to have a material adverse effect on the ability of the Service Provider to perform its obligations under this agreement;
- (f) the Service Provider has not breached any law or regulation which breach has or is reasonably likely to have a material adverse effect on the ability of the Service Provider to perform its obligations under this agreement;
- (g) it is of sound financial standing and there are no material facts or circumstances which may adversely affect its financial standing in the future which have not been fully and fairly disclosed to the Authorities and which, if so disclosed, might reasonably have affected the decision of the Authorities to enter into this agreement;
- (h) no Insolvency Event and, on the date of this agreement or relevant Service Commencement Date (as the case may be), potential Insolvency Event, is continuing;
- (i) the information, in written or electronic format, supplied by, or on behalf of, the Service Provider to the Authorities in connection with the Service Provider's Tender was, at the time it was supplied or at the date it was stated to be given (as the case may be), to the best of the Service Provider's knowledge and belief,
 - (i) if it was factual information, complete, true and accurate in all material respects;

- (ii) if it was a financial projection or forecast, prepared on the basis of recent historical information and on the basis of reasonable assumptions and was arrived at after careful consideration;
- (iii) if it was an opinion or intention, made after careful consideration and was fair and made on reasonable grounds; and
- (iv) not misleading in any material respect, nor rendered misleading by a failure to disclose other information,

except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Service Provider to the Authorities;

- (j) it shall promptly notify the Authorities in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authorities during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs;
- (k) it has made arrangements to ensure that it will have sufficient working capital, skilled personnel, equipment, machinery and resources available to it in order to carry out the Services in accordance with the Specification;
- (l) it has or has made arrangements to ensure that it will obtain all necessary consents, licences and permissions to enable it to carry out the Services and will throughout the Term obtain and maintain all further and other necessary consents, licences and permissions to enable it to carry out the Services.

5.2 The Service Provider shall not be entitled to recover any additional costs from the Authorities which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authorities by the Service Provider in accordance with clause 5.1(j) save:

- (a) where such additional costs or adverse effect on performance have been caused by the Service Provider having been provided with fundamentally misleading information by or on behalf of the Authorities and the Service Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided;
- (b) in respect of material changes in the Employment Liability Information as between:

- (i) the Employment Liability Information made available to and relied upon by the Service Provider in determining the Charges at the time it submitted the Service Provider's Tender; and
- (ii) the Employment Liability Information supplied to the Service Provider on or immediately prior to the Relevant Transfer by the Incumbent Contractor in respect of each of the Authorities' relevant Service Commencement Dates (but not that of any Partner Organisation).

5.3 If the exception in clause 5.2(a) applies, the Service Provider shall be entitled to recover such reasonable additional costs from the Authorities or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.

5.4 If the exception in clause 5.2(b) applies, the parties shall review the Charges in accordance with the provisions of Schedule 16 (**Pre-Contract Assumptions**), and the Charges may be adjusted upwards or downwards accordingly.

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

6. SERVICE PROVIDER DUE DILIGENCE

6.1 The Service Provider warrants and represents that:

- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and its obligations under this agreement, including but not limited to:
 - (i) information as to the nature, location and condition of the Authorities' Premises (including hydrological, geological, geo-technical, contamination and sub-surface conditions);
 - (ii) information relating to the number, location and nature of properties involved in the delivery of the Services;
 - (iii) information relating to the tonnage, trends and composition of the waste to be collected in the performance of the Services;
 - (iv) relevant information relating to Delivery Sites;
 - (v) the nature of the Services;
 - (vi) the socio-economic demography of the Authorities' Area;
 - (vii) the nature of the highway network within the Authorities' Area, including that of traffic flows, highway maintenance and access issues;

- (b) it has asked the Authorities all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
- (c) it has received all information requested by it from the Authorities pursuant to clause 6.1(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
- (d) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authorities pursuant to clause 6.1(c);
- (e) it has raised all relevant due diligence questions with the Authorities before the date of this agreement;
- (f) it has satisfied itself as to the resources required to deliver the Services in conformance with this agreement;
- (g) it has satisfied itself as to the Authorities' Assets to which it will acquire rights and the nature and extent of the risks and obligations assumed by it under this agreement;
- (h) it has entered into this agreement in reliance on its own due diligence.

6.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authorities in respect of any information which is provided to the Service Provider by the Authorities and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

7. PRECONDITIONS

7.1 The Service Provider shall:

- (a) procure the execution and delivery to the Authorities as soon as practicable after the Effective Date:
 - (i) the Required Insurances (as defined in clause 59.1);
 - (ii) the Admission Agreement and the Pension Bond and Indemnity and/or the Pension Guarantee in the form or substantially the form set out in Schedule 14 as may be agreed between the parties and the administering authority, if applicable;
 - (iii) the relevant Authorities' Premises Lease in the form or substantially the form set out in Schedule 20 and any ancillary documentation;
- (b) provide the Authorities with copies of any Service Provider policies including but not limited to health and safety policies/manuals,

environmental policy statements, and corporate social responsibility statements;

- (c) carry out all actions necessary to comply with its obligations under TUPE, including co-operating with the Incumbent Contractor(s) of the Services in relation to information and consultation measures in relation to the Elmbridge Commencement Date; and
- (d) undertake all such measures to ensure that the Service Provider and Service Provider's Personnel are fully familiar with the relevant provisions of this agreement, including the Service Provider's Tender, its obligations under this agreement, the Authorities' information communications technology infrastructure and the identities of all relevant service providers to the Authorities and to the Waste Disposal Authority.

7.2 In respect of each subsequent Service Commencement Date, the parties shall agree any subsequent preconditions that apply, including but not limited to procuring such further Admission Agreement and Pension Bond and Indemnity and Guarantee (as applicable) pursuant to the provisions of clause 7.1(a)(ii), entry into additional Authorities' Premises' Lease(s) pursuant to clause 7.1(a)(iii) and discharging its obligations set out in clauses 7.1(c) and 7.1(d).

8. PARENT COMPANY GUARANTEE

8.1 The Service Provider shall procure the execution and delivery to the Authorities on or before the date of this agreement of a Parent Company Guarantee in favour of the Authorities in the form set out in Schedule 17 to secure the due performance by the Service Provider of its obligations to the Authorities.

8.2 If at any time during the Term, the Guarantor (as defined in the Parent Company Guarantee) ceases to meet two of the three criteria in clause 8.3, the Service Provider shall, at the request of the Authorities, procure that another company within the Guarantor's group, which at the relevant time and thereafter shall meet two of the three guarantee criteria set out in clause 8.3 (**Guarantee Criteria**), shall become the Guarantor and provide as soon as reasonably practicable and no later than within 3 months of the Authorities' written request, a Parent Company Guarantee substantially in the form referred to in clause 8.1.

8.3 The Guarantee Criteria for the purposes of clause 8.2 above shall be that the Guarantor satisfies at least two of the three Guarantee Criteria:

- (a) consolidated net asset value of not less than £30,000,000 (thirty million pounds) Indexed (as evidenced in the latest statutory accounts); and/or

- (b) has a credit rating greater than C from Equifax or an equivalent credit rating from another recognised credit rating agency; and/or
 - (c) listed on a recognised international stock exchange.
- 8.4 If the Service Provider fails, or is unable to, comply with the provisions of clause 8.2 within three months of a written notice to do so, the Service Provider shall provide to the Authorities such alternative form of security (which in the case of a performance bond, may be based on the form or substantially the form set out in Schedule 18) to a value of not less than an amount equal to 1/3 of the total Charges anticipated to be payable to the Service Provider by the Authorities in the then applicable Contract Year as the Authorities may approve (such approval not to be unreasonably withheld or delayed).
- 8.5 If the Service Provider provides alternative security under clause 8.4 and at any time thereafter the Authorities agree that the Guarantor or other company within the Service Provider's group does meet all of the Guarantee Criteria so as to provide a meaningful guarantee, the Service Provider shall have the right by notice to the Authorities to substitute for such alternative security a Parent Company Guarantee substantially in the form set out in Schedule 17 by such company.
- 8.6 If the Service Provider fails to comply with its obligations under this clause 8, the Authorities shall have the right to terminate this agreement with immediate effect in accordance with clause 69.
- 8.7 Any dispute arising under this clause 8 may be referred by either party to determination under the Dispute Resolution Procedure.
- 9. **CONTRACT MANAGEMENT**
- 9.1 This agreement shall be managed in accordance with the provisions of Schedule 9.
- 10. **MOBILISATION**
- 10.1 No later than six months prior to any Service Commencement Date and with respect to the Elmbridge Commencement Date, the earlier of that date and the date falling 10 Working Days from and including the Effective Date, the Service Provider shall prepare and submit to the Authorities for their approval the Service Mobilisation Plan and the Authorities shall notify the Service Provider of the Annual Baseline Activity pursuant to paragraph 9 of Schedule 7. The Service Mobilisation Plan shall be based upon the Service Provider's Tender and updated, where appropriate, to correlate to any changes in the Services arising between the date of the Service Provider's Tender and the applicable Service Commencement Date.

- 10.2 The Authorities shall provide the Service Provider with its comments on the Service Mobilisation Plan within 20 Working Days of receipt. The Service Provider shall incorporate the Authorities' comments and suggestions and shall issue a revised copy of the Service Mobilisation Plan to the Authorities within 10 Working Days of receipt of the comments and suggestions.
- 10.3 On the issuing of the agreed Service Mobilisation Plan in accordance with clause 10.2, the parties shall implement the Service Mobilisation Plan to enable an orderly migration of the Services from the Incumbent Contractor to the Service Provider and the Service Provider shall provide all those Services that are associated with the mobilisation of the Services to the Authorities.
- 10.4 For the avoidance of doubt, the Service Mobilisation Plan may include:
- (a) the implementation and migration strategy for the Service Provider's client relationship management and performance management software and the Authorities' data;
 - (b) the parties' agreed approach to funding the Assets;
 - (c) the parties' agreed approach to any Service Provider' investment proposals for any of the Authorities' Premises; and
 - (d) the parties' agreed approach to the Commercial Waste Collection Services, the Service Users' Contact Management Services and the Garden Waste Administration Service.
- 10.5 Within 20 Working Days of the Effective Date, the Service Provider shall arrange a pre-commencement meeting which shall be attended by senior representatives of the Service Provider, the Authorities' Authorised Officer, and such other representatives of the Authorities and, as deemed necessary by the Authorities, other service providers (including but not limited to the Incumbent Contractor(s)) and Surrey County Council in its capacity as Waste Disposal Authority and the Highway Authority. At the pre-commencement meeting, the parties shall discuss and review the relevant method statements contained in the Service Provider's Tender for the mobilisation of the Services, provision of the Authorities' Premises and handover necessary to secure a smooth, seamless and successful transition of the Services from any Incumbent Contractor to the Service Provider.
- 10.6 The Service Provider shall liaise with any Incumbent Contractor and other service providers to the Authorities and to Surrey County Council in its capacity as the Waste Disposal Authority and the Highway Authority to ensure that any handover is carried out successfully with no deterioration in the delivery of the Services to the Service Users. The Service Provider shall arrange and attend as many meetings with the Authorities, Surrey County Council as the Waste Disposal Authority and the Highway Authority and the Incumbent

Contractor(s) as are reasonably necessary for the successful handover of the Services.

THE SERVICES

11. SUPPLY OF SERVICES

11.1 The Service Provider shall provide the Services to the Authorities that relate to the period from and including the Effective Date to the Elmbridge Commencement Date, including but not limited to those set out in clause 10 (Mobilisation), and then the Services with effect from Elmbridge Commencement Date and from each subsequent Service Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.

11.2 The Services shall be provided equally to each Authority with no preference or discrimination between them and the Service Performance Standards (as detailed in the Specification) shall be met in each Authority Area. If it emerges that a request or operational imperative affecting one Authority Area or part of the Authorities' Area will have a detrimental impact on another Authority Area or part of the Authorities' Area, the Service Provider shall escalate the matter to the Contract Partnering Board.

12. KPIs

12.1 Where any Service is stated in Schedule 3 to be subject to a specific KPI, the Service Provider shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than such specific Target KPI.

12.2 As existing Services are varied and new Services are added, Target KPIs for the same will be determined and included within Schedule 3.

12.3 The Service Provider shall provide records of and Performance Management Reports summarising the Achieved KPIs as provided for in clause 48.

12.4 In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Authorities may have, the provisions of clause 40 shall apply.

13. SERVICE STANDARDS

Without prejudice to clause 12, the Service Provider shall from the Effective Date provide the Services, or procure that they are provided with reasonable skill and care and safely and diligently and in accordance with:

- (a) Good Industry Practice;
- (b) this agreement;
- (c) all applicable Authorities' policies;
- (d) all applicable Law;
- (e) all Necessary Consents;
- (f) the Specification; and
- (g) the Authorities' Strategic Objectives, as set out in clause 14 below and in the Specification.

14. STRATEGIC OBJECTIVES

14.1 The objectives of the Authorities in entering into this agreement with the Service Provider are that the Service Provider:

- (a) discharges each of the Authorities' statutory obligations under section 89 EPA and sections 45 and 45A EPA and other relevant Law;
- (b) provides Services which manage waste, recycling and street cleaning in an effective, efficient, environmentally and economically sustainable manner;
- (c) delivers the Services through utilising innovative solutions;
- (d) achieves high levels of Service User satisfaction with the delivery of the Services;
- (e) maintains a good and efficient relationship with the Waste Disposal Authority;
- (f) maintains good and efficient relationships with other service providers appointed by the Authorities, and co-operates with, and provides information to such other service providers as the Authorities request;
- (g) assists the Authorities to achieve the aims of the Surrey Joint Municipal Waste Management Strategy and its action plans (as may be amended and/or updated from time to time), including but not limited to assisting the Authorities to deliver the Surrey Joint Municipal Waste Management Strategy targets for household recyclable waste;
- (h) acknowledges that as a provider of highly visible publicly funded services to Service Users, it accepts, and shall promote to Service Provider Personnel and Sub-Contractors, the necessity of adhering to high ethical standards reflecting the Seven Principles of Public Life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership).

15. **COMPLIANCE AND EPA DUTY OF CARE**

- 15.1 The Service Provider shall ensure that all Necessary Consents are in place to provide the Services and the Authorities shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 15.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Service Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 15.3 The Service Provider shall:
- (a) at all times comply with its duty of care under section 34 of the EPA (**EPA Duty**);
 - (b) shall have a duty to inform the Authorities if any person for whom the Authorities are responsible may, in the reasonable opinion of, or to the knowledge of the Service Provider, be in breach of the EPA Duty.

16. **HEALTH AND SAFETY**

- 16.1 The Service Provider shall perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety;
 - (b) in a manner which is consistent with all current relevant health and safety precautions required to comply with Good Industry Practice and Law for the protection of the Service Provider, Service Provider's Personnel, Service Users, the Authorities and the Authorities' employees;
 - (c) the Health and Safety Policy whilst at any of the Authorities' Premises.
- 16.2 Each party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at any of the Authorities' Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Service Provider shall instruct the Service Provider's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

17. **EQUALITY**

- 17.1 Without limiting the general obligation set out in clause 15.1, the Service Provider shall (and shall procure that the Service Provider's Personnel shall):

- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Authorities' equality and diversity policy as provided to the Service Provider from time to time; and
 - (iii) any other requirements and instructions which the Authorities reasonably impose in connection with any equality obligations imposed on the Authorities at any time under applicable equality law;
- (b) take all necessary steps, and inform the Authorities of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation); and
- (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Service Provider shall also undertake, or refrain from undertaking, such acts as the Authorities request so as to enable the Authorities to comply with their obligations under the Human Rights Act 1998.

18. NUISANCE

- 18.1 When carrying out any operations, works or services in connection with the provision of the Services anywhere including without limitation at any Authorities' Premises, a highway, a Delivery Site, or on any premises of any Service User or other provider of services to the Authorities or any one of them, the Service Provider shall:
- (a) take all practical precautions necessary to prevent or reduce any nuisance to the owners, tenants or occupiers of the same and/or of adjacent properties and to the public and third parties generally;
 - (b) shall take all proper precautions to protect all buildings, land and highways from damage;
 - (c) take all reasonable steps to avoid unnecessary inconvenience to the public and to Service Users;
 - (d) take all necessary steps to maintain good customer care and relations with Service Users and owners, tenants and/or occupiers of properties adjacent to any Authorities' Premises and with Service Users, the public and third parties generally.

19. **PREMISES, DEPOTS AND STORES**

- 19.1 The Service Provider shall provide and maintain suitable premises depots and stores as are necessary for the performance of the Services.
- 19.2 The Service Provider shall on request grant the Authorities' Authorised Officer access to all premises depots and stores occupied by the Service Provider in connection with the provision of the Services.
- 19.3 No later than 20 Working Days prior to each Service Commencement Date, the Service Provider shall provide the Authorities' Authorised Officer with a schedule of all premises depots and stores to be used in connection with the provision of the Services. The Service Provider shall notify in writing the Authorities' Authorised Officer no later than 20 Working Days in advance of any changes.

20. **AUTHORITIES' PREMISES: GRANT OF LEASE(S)**

- 20.1 If the Service Provider elects to occupy one or more of the Authorities' Premises, the provisions of this clause shall apply.
- 20.2 Where the Service Provider wishes to occupy one or more of the Authorities' Premises, the relevant Authority shall grant to the Service Provider and the Service Provider shall enter into, the applicable Lease(s) no later than 10 Working Days prior to the Lease commencement date stated in the Lease(s).

- 20.3 The parties acknowledge that

Commercially sensitive information

- 20.4 The Service Provider acknowledges that

Commercially sensitive information

- [REDACTED]
- 20.5 Each such Lease shall be contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954, and prior to the grant of any Lease:
- (a) the relevant Authority shall serve on the Service Provider a notice in relation to the tenancy to be created by the Lease(s) as required by section 38A(3)(a) of the Landlord and Tenant Act 1954;
 - (b) the Service Provider, or a person duly authorised by the Service Provider, shall make a statutory declaration as required by section 38A (3) (b) of the Landlord and Tenant Act 1954; and
 - (c) the Service Provider shall confirm that where the statutory declaration was made by a person other than the Service Provider, the declarant was duly authorised by the Service Provider to make the statutory declaration on behalf of the Service Provider.
- 20.6 No later than 20 Working Days prior to the Service Provider wishing to take up occupation of any of the Authorities' Premises, the Authorities' Authorised Officer shall deliver two engrossments of the relevant Lease(s) to the Service Provider. The Service Provider shall execute and deliver the Lease(s) as a deed to the Authorities' Authorised Officer within 5 Working Days of receipt. The applicable Authority shall execute the original Lease(s) as a deed and send the original Lease(s) to the Service Provider. Failure to comply by the Service Provider shall entitle the Authorities to serve a Remediation Notice in accordance with Schedule 3.
- 20.7 The Service Provider shall apply for, and procure, registration of the Lease(s) at the Land Registry in accordance with the terms and provisions of the Lease(s).
- 20.8 The Lease(s) shall automatically cease and determine on the Termination Date (or if not granted at the time, the obligation to grant any Lease(s) shall automatically cease to apply on the Termination Date). Where a Lease has been entered into, the Service Provider shall on the Termination Date, or as soon as practicable thereafter, deliver to the Authorities' Authorised Officer the Lease(s) together with all relevant title deeds, releases from any charge(s) and a direction to the Chief Land Registrar to cancel the registered titles relating to the Lease(s). The Service Provider shall take all steps as may be proper and reasonable to cancel or assist in the cancellation of all entries at the Land Registry and the Land Charges Registry in relation to the Lease(s).
- 20.9 The Service Provider shall not be entitled to any compensation in respect of any variation of the terms of the Lease(s) or the unexpired part of its interest as tenant under the Lease(s) on assignment or surrender or automatic

determination in accordance with clause 20.8 other than as provided for in this agreement.

20.10 The Service Provider shall procure that:

- (a) the provision of the Services at the Authorities' Premises by or on behalf of the Service Provider shall be carried out in a manner which does not breach any provisions of the title deeds relating to the Authorities' Premises; and
- (b) in providing the Services at the Authorities' Premises, there shall be no action, or omission to act by the Service Provider, its employees, agents or servants and any Sub-Contractor, which shall give rise to a right for any person to obtain title to or any right or interest over any of the Authorities' Premises or any part of it or them (save in accordance with the terms of this agreement).

20.11 The parties to each Lease shall comply with their obligations under the Lease.

20.12 The provisions of the Exit Management Plan shall apply in relation to the Service Provider ceasing to provide the Services from, and providing vacant possession of, the Authorities' Premises on the expiry or termination of this agreement.

21. **AUTHORITIES' PREMISES: RESPONSIBILITY FOR CONTAMINATION**

21.1 The Service Provider shall not be responsible for any Historic Contamination in or emanating from any parts of any of the Authorities' Premises save to the extent that such Historic Contamination is, or has been, caused or contributed to, by or on behalf of the Service Provider (**Aggravated Contamination**). The Service Provider shall be entitled to a Compensation Event if the Services are disrupted due to the relevant Authority dealing with Historic Contamination which has been discovered and where remediation is required by the Environment Agency (or any successor having jurisdiction under environmental law) or insurer.

21.2 The Service Provider shall be responsible for any New Contamination (being Contamination caused by or on behalf of the Service Provider) or Aggravated Contamination including the egress or leaching of contamination which causes damage off site, damage to the Authorities' Premises, the costs of remediation and the disruption to the Services.

22. AUTHORITIES' PREMISES: CONDITION SURVEY PRIOR TO SERVICE COMMENCEMENT DATE

- 22.1 The Authorities shall procure that a condition survey and a photographic Schedule of Condition shall be undertaken no later than six months prior to each Lease commencement date.
- 22.2 Subject to clause 22.3, any items identified by the photographic Schedule of Condition or condition survey and which are categorised by the Authorities as requiring remedy in order that the landlord has complied with its statutory obligations shall be remedied by the Authorities prior to the Lease commencement date in accordance with Good Industry Practice.
- 22.3 If the Service Provider is to undertake any improvements to any of the Authorities' Premises on or after the applicable Lease commencement date, the parties shall agree in writing prior to the applicable Lease commencement date which of those works identified as the responsibility of the Authorities are not required to be undertaken by or on behalf of the Authorities prior to the applicable Lease commencement date.

23. AUTHORITIES' PREMISES: USE AND MANAGEMENT

- 23.1 The Service Provider shall only use the Authorities' Premises during the Term and then only for the purposes of the provision of the Services.
- 23.2 Unless agreed otherwise between the parties and recorded in the applicable Lease(s), the proposed forms of which are set out in Schedule 20, the Service Provider at its own cost:
- (a) is responsible for, and shall obtain, any consents, approvals or permissions, planning, environmental or otherwise, relating to the establishment of suitable premises depots and stores as are necessary for the performance of the Services;
 - (b) shall satisfy itself that all such consents, approvals or permissions, planning, environmental or otherwise, are in place as at the relevant Service Commencement Date and are maintained and/or renewed during the Term;
 - (c) shall comply with the conditions and requirements attached to all such consents, approvals or permissions, planning, environmental or otherwise, take all reasonable steps to ensure that none are revoked, and notify the Authorities immediately of any complaints, investigative procedures, enforcement notices received by the Service Provider and provide copies of the same within 5 Working Days;
 - (d) not without the Authorities' prior written consent, shall not apply for or agree to any variation, relaxation or waiver of any such consents,

approvals or permissions, planning, environmental or otherwise, or condition attached to any of them;

- (e) shall keep in good repair and condition all premises depots and stores, including the Authorities' Premises, used in connection with the provision of the Services and shall ensure that any service media within and exclusively serving the Authorities' Premises are kept in good working order except that the Tenant shall not be required to put any of the Authorities' Premises into any better state of repair or condition than it was in at the date of the applicable Lease as evidenced by the Schedule of Condition applicable to that Lease;
- (f) shall keep all premises depots and stores, including the Authorities' Premises, clean, tidy and properly secured.

23.3 The Service Provider shall be responsible for the safekeeping, and return at the end of the Term, of all keys provided to it by the Authorities, or any one of them, and any provided at its own expense, and shall only permit such keys to be given to those Service Provider's Personnel whose names and addresses have been supplied to the Authorities' Authorised Officer. The Service Provider shall ensure that an appropriate number of key holders, responsible for security of the Authorities' Premises, are appointed to enable their call-out for emergencies at all times.

23.4 The Service Provider shall at all times permit the Authorities' Authorised Officer or nominated representatives as deemed necessary access to any of the Authorities' Premises to monitor the Service Provider's performance and compliance with its obligations under this agreement.

24. **AUTHORITIES' PREMISES: RATES, TAXES AND UTILITIES**

24.1 Subject to clause 24.2, the Service Provider shall pay all present and future rates, taxes and other impositions and outgoings payable in respect of the Authorities' Premises, its use and any works carried out there. If any rates, taxes or other impositions and outgoings are payable in respect of the Authorities' Premises together with other property, the Service Provider shall pay a fair proportion of the amount payable.

24.2 If the Service Provider pays NNDR in respect of the Authorities' Premises, the Service Provider shall be reimbursed for such NNDR and shall add an amount equal to such NNDR to the invoice(s) it submits to the Authorities in accordance with clause 39.

24.3 The Service Provider shall pay all costs in connection with the supply and removal of electricity, gas, water, sewage, telecommunications, data and other services and utilities to or from the Authorities' Premises.

24.4 If any of those costs are payable in relation to the Authorities' Premises together with other property, the Service Provider shall pay a fair proportion of all those costs.

24.5 The Service Provider shall comply with all laws and with any recommendations of the relevant suppliers relating to the use of those services and utilities.

25. AUTHORITIES' PREMISES: MODIFICATIONS

25.1 The Service Provider shall not make any alterations, modifications, improvements, developments or additions to any of the Authorities' Premises without the prior written approval of the Authorities' Authorised Officer (such prior written approval to be in a deed to which the Service Provider and the relevant Authority are parties). Such alterations, modifications, improvements, developments or additions (**Modifications**) may include:-

- (a) the construction or demolition of any building facilities or structure;
- (b) any change to the design or the materials used in the building facilities or structure;
- (c) any change to the materials or colours used for particular surfaces, finishes and fixtures and fittings;
- (d) any change to the design components and materials used in the mechanical and electrical services, plant and equipment;
- (e) any change to the design components and materials used for fixtures and fittings;
- (f) any change to the design, components and materials used for the operation, maintenance and upkeep of the Authorities' Premises.

25.2 The Service Provider and the Authorities' Authorised Officer shall discuss any such proposal by the Service Provider and their respective responsibilities for the cost of any such Modifications. Any agreement shall include details of the ownership, insurance, operational and financial arrangements together with an agreed procedure for dealing with such matters on expiry or termination of this agreement.

25.3 The Service Provider shall not assume that any approval of any such Modifications by the Authorities' Authorised Officer would result in successful application for planning consent, building regulation approval or licences. The Service Provider shall be responsible for obtaining all necessary statutory and other consents and licences prior to any agreed modifications, improvements, developments or additions taking place.

- 25.4 Upon completion of any Modifications by the Service Provider, the Service Provider shall provide the Authorities' Authorised Officer with copies of such consents and statutory certificates of compliance, following testing and record drawings of the "as built" works.
- 25.5 On completion of any agreed Modification to any of the Authorities' Premises by the Service Provider, unless agreed otherwise in advance, the said Modification shall become an integral part of the Authorities' Premises. No reparation or compensation in respect of any agreed Modification shall be made by the Authorities to the Service Provider during the term of this agreement or on the Termination Date. The Service Provider shall not remove any Modification to any of the Authorities' Premises without the prior written approval of the Authorities' Authorised Officer.
- 25.6 Each of the Authorities reserves the right to make Modifications to its Authority Premises during the Term, and the provisions of Schedule 11 (Change Control) shall apply.
26. **AUTHORITIES' PREMISES: BREACH OF REPAIRING OBLIGATION**
- 26.1 If the Authorities reasonably believe that the Service Provider is in breach of its obligations under clause 23.2(e), then they may carry out or procure the carrying out of a survey of each of the affected Authorities' Premises to assess whether it has been and is being maintained by the Service Provider in accordance with its obligations under clause 23.2(e). This right may not be exercised more than once every 2 years.
- 26.2 The Authorities shall notify the Service Provider in writing a minimum of 10 Working Days in advance of the date it wishes to carry out the survey referred to in clause 26.1. The Authorities shall consider in good faith any reasonable request by the Service Provider for the survey to be carried out on a different date if such request is made at least 5 Working Days prior to the notified date and the Service Provider (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Service Provider's ability to provide the Services.
- 26.3 Where a survey is carried out pursuant to clause 26.1 the Authorities shall use reasonable endeavours to minimise any disruption caused by it to the provision of the Services by the Service Provider. The cost of the survey shall be borne by the Service Provider but in circumstances where the result of the survey demonstrates that the Service Provider was not in breach of its repairing and maintenance obligations the Authorities shall contribute to the cost of the survey at the level the Authorities believe is fair and reasonable. The Service Provider shall give the Authorities (free of charge) any reasonable

assistance required by the Authorities from time to time during the carrying out of any survey.

26.4 If a survey shows that the Service Provider has not complied or is not complying with its obligations under clause 23.2(e), the Authorities shall:

- (a) notify the Service Provider of the standard that the condition of the affected Authorities' Premises should be in to comply with its obligations under clause 23.2(e) and this agreement generally;
- (b) specify a reasonable period within which the Service Provider must carry out such rectification and/or maintenance work; and
- (c) be entitled to be reimbursed by the Service Provider any administrative costs reasonably and properly incurred by the Authorities in relation to the survey.

26.5 The Service Provider shall carry out such rectification and/or maintenance work within the period specified by the Authorities and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

26.6 In the event of any failure by the Service Provider to comply with clause 26.5 or if the Authorities are or become aware of a breach by the Service Provider of its obligations under clause 26.5, the Authorities shall be entitled to exercise their right of access and remedy such breach in accordance with Good Industry Practice and shall be entitled to recover any costs or expenses incurred in so doing from the Service Provider as a debt.

27. AUTHORITIES' PREMISES: WORKS IN DEFAULT

27.1 If, by reason of any accident or failure or other event occurring to, on or in connection with the Authorities' Premises, or any part thereof either during the performance of the Services or at any other times, any remedial or other work or repair shall in the opinion of the Authorities' Authorised Officer be urgently necessary and the Service Provider is unable or unwilling at once to do such work or repair, the Authorities may do such work or repairs as the Authorities' Authorised Officer considers necessary.

27.2 If the work or repair so done by the Authorities is work which in the opinion of the Authorities' Authorised Officer the Service Provider was liable to do at its own expense under this agreement all costs and charges properly incurred by the Authorities in so doing shall on request be paid by the Service Provider to the Authorities or may be deducted by the Authorities from any monies due or which may become due to the Service Provider.

27.3 Any dispute arising in relation to this clause shall be dealt with in accordance with clause 54 (Dispute Resolution).

28. **AUTHORITIES' PREMISES: SURVEYS ON EXPIRY**

28.1 No earlier than 18 months and no later than 6 months prior to the expiry of this agreement or, if earlier, the applicable expiry or termination of any of the Leases, the Authorities shall be entitled to carry out or procure the carrying out of a final survey of each of the Authorities' Premises to assess whether each of the Authorities' Premises has been and is being maintained by the Service Provider in accordance with its obligations under this agreement.

28.2 The Authorities shall notify the Service Provider in writing at least 5 Working Days in advance of the date they wish to carry out or procure the carrying out of the final survey at each of the Authorities' Premises. The Authorities shall consider in good faith any reasonable request by the Service Provider for the final survey to be carried out on a different date if such request is made at least 2 Working Days prior to the notified date and the Service Provider (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Service Provider's ability to provide the Services.

28.3 When carrying out the final survey of each of the Authorities' Premises, the Authorities shall use reasonable endeavours to minimise any disruption caused by it to the provision of the Services by the Service Provider. The Service Provider shall give the Authorities or any person carrying out the survey (free of charge) any reasonable assistance required by the Authorities during the carrying out of each of the final surveys. The cost of the final surveys shall be borne by the Service Provider.

28.4 If the final survey shows that the Service Provider has not complied with or is not complying with its obligations under clause 23.2(e) to keep in good repair and condition the Authorities' Premises, the Authorities' shall:

- (a) notify the Service Provider of the rectification and/or maintenance work which is required to bring the condition of the Authorities' Premises to the standard it would have been in if the Service Provider had complied or was complying with its obligations under clause 23.2(e) (**Required Standard**); and
- (b) specify a reasonable period within which the Service Provider must carry out such rectification and/or maintenance work.

28.5 The Service Provider shall carry out such rectification and/or maintenance work notified pursuant to clause 28.4 (**Outstanding Work**) in order to reach

the Required Standard within the period specified and any costs it incurs in carrying out the Outstanding Work shall be at its own expense.

- 28.6 If and to the extent that the Service Provider fails to carry out the Outstanding Work within the period specified in clause 28.4, the Authorities shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Service Provider's expense such amounts incurred by the Authorities shall be subject to clause 44 (Set Off) or in the alternative the Authorities may elect to recover such amounts from the Service Provider as a debt payable on demand.

29. CLOSURE AND/OR RELOCATION OF THE AUTHORITIES' PREMISES

- 29.1 The Authorities shall have the right by giving not less than 6 months' written notice to temporarily close any of the Authorities' Premises. The period of any such closure shall be specified in the written notice.
- 29.2 The Authorities shall have the right by giving not less than 6 months' written notice to require the Service Provider to relocate to an alternative Authorities' Premises and the Service Provider shall execute all relevant documentation to achieve the relocation, including but not limited to any surrender of the relevant Lease(s) and entry into one or more new Lease(s) and ancillary documentation, relocate the Services, Service Provider's Personnel, equipment, plant and assets together with any other operational requirements to facilitate a seamless change to the new location.
- 29.3 If the Authorities determine to issue a temporary closure notice and/or a relocation notice as set out above, the Service Provider shall issue a Change Control Note in accordance with the Change Control Procedure.

30. SERVICE PROVIDER'S ICT INFRASTRUCTURE AND SOFTWARE LICENSING

- 30.1 In relation to any information and communications technology (including MIS technology) (ICT) which the Service Provider uses in connection with the provision of the Services (**Information Technology System (ITS)**), the Service Provider shall at its own cost but subject to the Authorities' satisfaction ensure that such ITS is available at all times through the Term such as to enable the Service Provider to comply with its obligations under this agreement; and in particular (but without limitation) to perform the Services in accordance with the Specification. Any change to the ITS shall be agreed by the Authorities in accordance with the Change Control Procedure.
- 30.2 The Authorities require that any ITS used by the Service Provider provides a common data definition and open interface through which each of the Authorities may access data for use by any Authority ICT infrastructure. The

common data definition and open interface shall be that agreed by the Authorities and the Service Provider with effect from the Effective Date of this agreement and once agreed, may only be changed by the Service Provider with the prior written consent of the Authorities and the Change Control Procedure shall apply.

- 30.3 The Service Provider shall ensure that at all times during the Term (and until any computerised data has been returned to the Authorities' Authorised Officer in accordance with the provisions of this agreement) adequate disaster recovery arrangements are in place for the event of the partial or total failure of the Service Provider's ITS which arrangements shall enable the Service Provider to continue without interruption to comply with its remaining obligations under this clause 30.
- 30.4 The Service Provider shall grant, or shall procure the grant of, sufficient software licences (the number of which shall be notified to the Service Provider by the Authorised Officer from time to time) together with any other necessary consents so as to enable the Authorities to access and/or use (as the case may be) during the Term the software to be used in connection with the provision of the Services, including but not limited to the Garden Waste Administration Service and the Service Users' Contact Management Service.
- 30.5 The Service Provider shall take all reasonable steps to permit that any software licences in relation to software to be used in connection with the provision of the Services allow for the software to be tested by, or on behalf of the Authorities on request and in accordance with the Authorities' reasonable requirements prior to it being implemented operationally by the Service Provider.
- 30.6 The Authorities shall free of charge either in hard copy or in computerised form (as appropriate) provide the Service Provider with such data as is necessary in their opinion for the Service Provider to perform the Services.
- 30.7 The Service Provider shall act as the bailee of any Authorities' Data which may at any time be in the Service Provider's possession or under its control and shall store such Authorities' Data safely and separately from any data not relating to the Services and in a manner which makes it readily identifiable as Authorities' Data relating to the Services.

31. PROVISION OF ASSETS AND EQUIPMENT

- 31.1 Throughout the Term, the Service Provider shall provide all necessary Assets required to provide the Services. This shall include, but shall not be limited to, the Assets set out in the Initial Inventory.

Condition of Assets

- 31.2 The Service Provider shall maintain and keep the Assets in good repair condition and working order, serviced, insured, cleaned and maintained in accordance with Good Industry Practice and any manufacturer's recommendations.
- 31.3 The Service Provider shall replace at its own cost and expense, any of the Assets where such Assets require replacement in order to provide the Services to a standard required by this agreement and shall ensure that all replacement Assets are of a standard which is at least that which meets Good Industry Practice and are fit for the purpose of providing the Services in accordance with this agreement.
- 31.4 Without limiting clause 31.2, the Service Provider shall maintain and keep the Collection Vehicles in good and serviceable and roadworthy condition, and shall obtain and maintain at all times during the Term all necessary operators' licences and other permits as may be required in connection with the use of the Collection Vehicles in the provision of the Services.
- 31.5 If the Service Provider does not comply with its obligations set out in clauses 31.2 and 31.4, the Authorities may procure the repair and maintenance of the Assets including the Collection Vehicles at any of the Authorities' Premises or other place as the Authorities think fit, and any sums expended in so doing may be charged to the Service Provider and recovered as a debt or set off in accordance with clause 44 (Set Off).

Use of Authorities' Assets and Collection Vehicles

- 31.6 The Authorities' Assets shall at all times remain the property and in the beneficial ownership of the Authorities. Where the Service Provider replaces any of the Authorities' Assets, it shall replace it with an equivalent of clean and unencumbered title which shall immediately transfer to the Authorities (or where relevant a specific Authority).
- 31.7 The Service Provider shall not without the prior written consent of the Authorities use the Authorities' Assets or Collection Vehicles to provide services to any third party or for any purpose other than providing the Services to the Authorities.
- 31.8 If the Service Provider wishes to dispose of any Assets during the Term, it shall give the Authorities a first right to acquire such Assets at their current market value (such market value to be agreed by the parties both acting reasonably and in good faith).

Asset and Equipment Register

- 31.9 The Asset and Equipment Register shall comprise of two parts:
- (a) the Authorities' Assets (noting, if relevant which Authority or Authorities' Related Party owns each of the Authorities' Assets); and
 - (b) Service Provider Assets.
- 31.10 The Service Provider shall compile and maintain the Assets and Equipment Register so that it is at all times complete, accurate and up to date and shall make it available to the Authorities on demand and in any event upon the earlier of:
- (a) six months prior to the expiry of the Initial Term or of any Extension Period;
 - (b) the Termination Date where the Termination Date has arisen by reason of an Insolvency Event or Service Provider default or as a result of a Prohibited Act; or
 - (c) two months prior to the Termination Date where the Termination Date has arisen for any other reason.

Return of Authorities' Assets

- 31.11 The Service Provider shall with the Authorities' prior written consent, dispose of any of the Authorities' Assets that are replaced during the Term and shall update the Asset and Equipment Register accordingly.
- 31.12 At the end of the Term, the Service Provider shall:
- (a) return to the Authorities all the Authorities' Assets in good and serviceable repair and condition (fair wear and tear excepted);
 - (b) leave the Authorities' Financed Vehicles at one or more of the Authorities' Premises as directed by the Authorised Officer in a secure, serviceable and clean condition having regard to their age, fair wear and tear arising from the use of the Authorities' Financed Vehicles excepted (unless during the Term the Authorities shall have notified the Service Provider in writing of its decision to write off any of such Authorities' Financed Vehicles); and
 - (c) hand over to the Authorised Officer the V5C registration certificate signed by the Service Provider for the transfer of the registration of the Authorities' Financed Vehicles to the Authorities or to the Authorities' Related Party as the case may be,
- whereupon the Authorities or the Authorities' Related Party shall take over all responsibility including on-going costs for the Authorities' Financed Vehicles.

Transfer of Service Provider Assets

- 31.13 At the end of the Term (save where termination is in connection with an Insolvency Event which is dealt with at clause 32), the Service Provider shall offer for sale to the Authorities all Service Provider Assets which are used solely in connection with the Services at the lower of market value and book value. If all or any of the Authorities notify the Service Provider that they wish to purchase such Service Provider Assets, the Service Provider shall facilitate such transaction within one month of such notification and shall effect such instruments as are necessary.
- 31.14 For the avoidance of doubt the provisions of clause 31.6 shall apply to all Collection Vehicles. If the Collection Vehicles are leased or subject to an operating agreement, the Service Provider shall arrange for the transfer of such instruments to the Authorities, or any one of them (or such of them as the Authorities shall notify the Service Provider).
- 31.15 If the Authorities choose to buy or have transferred to them the Service Provider Assets, the Service Provider shall:
- (a) ensure that the Service Provider Assets are capable of being delivered to the Authorities, or any one of them, or any Replacement Service Provider(s) for immediate use; and
 - (b) if required by the Authorities:
 - (i) make the Service Provider Assets available for collection by the Authorities, or any one of them, or any Replacement Service Provider(s); or
 - (ii) deliver the Service Provider Assets to the Authorities, or any one of them; or
 - (iii) deliver the Service Provider Assets to one or more Replacement Service Provider(s),in no worse condition than that which existed on the relevant Service Commencement Date and for immediate use by the Authorities, or any one of them, or any Replacement Service Provider (as the case may be).
- 31.16 The Authorities shall choose to buy or have transferred to them the Service Provider Assets at their entire discretion. If the Authorities choose not to have transferred or purchase the Service Provider Assets, their disposal or future ownership shall be at the Service Provider's own risk, cost and discretion.

32. **AUTHORITIES' FINANCED VEHICLES**

- 32.1 The Service Provider shall purchase the new Authorities' Financed Vehicles (listed in Schedule 27 (Authorities' Financed Vehicles) on behalf of the Authorities. The Service Provider shall agree, and then implement, the procurement strategy for the new Authorities' Financed Vehicles for the purposes of assuring the Authorities that the terms of the purchase were the most economically advantageous.
- 32.2 The Service Provider shall ensure that the Authorities' Financed Vehicles shall:
- (a) correspond with their description and any applicable specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 (as amended) and fit for any purpose held out by the supplier or made known to the supplier by the Service Provider expressly or by implication and in this respect the Authorities rely on the Service Provider's skill and judgement;
 - (c) be tested and inspected;
 - (d) be free from defects in design, material and workmanship; and
 - (e) comply with all applicable statutory and regulatory requirements relating to the manufacture and delivery of the Authorities' Financed Vehicles.
- 32.3 The Authorities may inspect and test the Authorities' Financed Vehicles at any time before delivery. The Service Provider shall remain fully responsible for the Authorities' Financed Vehicles despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Service Provider's obligations under this agreement.
- 32.4 If following such inspection or testing the Authorities considers that the Authorities' Financed Vehicles do not conform or are unlikely to comply with the Service Provider's undertakings at clause 32.2 the Authorities shall inform the Service Provider and the Service Provider shall immediately take such remedial action as is necessary to ensure compliance.
- 32.5 The Authorities may conduct further inspections and tests after the Service Provider has carried out its remedial actions.
- 32.6 On delivery of the Authorities' Financed Vehicles to the Authorities the Service Provider shall certify that the Authorities' Financed Vehicles conform to the Service Provider's undertakings at clause 32.2, shall complete the vesting certificate in the form attached at Schedule 28 and shall be responsible for all risks and expense in this respect.

- 32.7 The Authorities' rights and remedies under this clause 32 are in addition to its rights and remedies implied by statute and common law.
- 32.8 The Service Provider may invoice the Authorities (or the Authorities' Related Party) for the price of the Authorities' Financed Vehicles (which shall not exceed the price of the Authorities' Financed Vehicles in Schedule 27 (Authorities' Financed Vehicles)) plus VAT at the prevailing rate on or at any time after the date of delivery. The Service Provider shall provide any supporting documents that the Authorities (or the Authorities' Related Party) may require, including but not limited to the copies of invoices from the vehicle manufacturers/suppliers.
- 32.9 The Authorities (or the Authorities' Related Party) will pay a correctly rendered VAT invoice delivered to the Authorities pursuant to clause 32.8 for the purchase of the Authorities' Financed Vehicles from the Service Provider within:
- (a) five Working Days of receipt, subject to the Service Provider having provided the Authorities with a pro-forma invoice corresponding to the invoice submitted to the Authorities in accordance with clause 32.8 no later than 10 Working Days prior to the date of delivery; otherwise
 - (b) within thirty days of receipt.
- 32.10 On payment being received in full by the Service Provider, title in the Authorities' Financed Vehicles shall pass to the Authorities or to the Authorities' Related Party as the case may be. Following the transfer of the title to the Authorities, the Service Provider shall use all reasonable endeavours to transfer or assign any manufacturers' warranties to the Authorities.
- 32.11 If title in any of the Authorities' Financed Vehicles does not pass to the Authorities (or to the Authorities' Related Party) until after the relevant Service Commencement Date, then the Service Provider may use the Authorities' Financed Vehicles from the relevant Service Commencement Date for the provision of the Services at its own risk and expense. If an Authorities' Financed Vehicle is damaged or any defects are discovered prior to the Service Provider transferring title to the Authorities or to the Authorities' Related Party, the Authorities or the Authorities' Related Party shall not pay for such Authorities' Financed Vehicle until the Authorities' Financed Vehicle has been repaired or replaced.
- 32.12 Once title in the Authorities Financed Vehicles has passed to the Authorities (or to the Authorities' Related Party), the Authorities (or the Authorities' Related Party) will then issue the Authorities' Financed Vehicles free of charge

to the Service Provider solely for use for the provision of the Services. The Service Provider shall not use the Authorities' Financed Vehicles for the provision of services to any third party (which for the avoidance of doubt shall include the provision of Commercial Waste Collection Service) without the prior written consent of the Authorities.

- 32.13 The Service Provider shall keep the Authorities' Financed Vehicles at any of the Authorities' Premises when not being used in the provision of the Services.
- 32.14 The Service Provider shall take on all risks in relation to the Authorities' Financed Vehicles, including without limitation the Service Provider being responsible for all costs incurred if the Authorities' Financed Vehicles procured prove to be subsequently unfit for purpose in some way; or if the Service Provider fails to maintain or operate the Authorities' Financed Vehicles correctly; or if the Authorities' Financed Vehicles are incorrectly specified by the Service Provider.
- 32.15 If the Authorities' Financed Vehicles are delivered prior to the Elmbridge Commencement Date the Service Provider shall be responsible for safe keeping the Authorities' Financed Vehicles which may include storing them at a Service Provider-owned secure site or at one of the Authorities' Premises if permitted by the landlord of that Authorities' Premises and/or other users of that Authorities' Premises.
- 32.16 Without prejudice to the Authorities' (or the Authorities' Related Party) ownership of the Authorities' Financed Vehicles the Service Provider shall be the registered keeper of the Authorities' Financed Vehicles and shall hold the V5C registration certificate for each of the Authorities' Financed Vehicles.
- 32.17 The Service Provider shall be responsible for all on-going costs in relation to the Authorities' Financed Vehicles including but not limited to taxing and testing the Authorities' Financed Vehicles to comply with all statutory requirements which apply to the use of that class of vehicle on the public highway, fuel, oil, lubrication, tyres, routine maintenance, servicing and repair in accordance with the manufacturers' recommendations.
- 32.18 The Service Provider shall be responsible for and shall release and indemnify the Authorities or any Authorities' Related Party on demand from and against all liability for claims and/or demands brought against the Authorities or any Authorities Related Party in respect of the use of the Authorities' Financed Vehicles by the Service Provider's Personnel.
- 32.19 The Service Provider shall provide a monthly summary schedule of service/repairs to the Authorised Officer and shall make available full records for inspection to the Authorised Officer upon request.

- 32.20 The Service Provider shall permit the Authorised Officer at any time to inspect any of the Authorities' Financed Vehicles.
- 32.21 If any Authorities' Financed Vehicle is unavailable for any reason including but not limited to servicing, repair or testing the Service Provider shall provide at its own cost replacement vehicles for the provision of the Services.
- 32.22 The Service Provider shall give immediate notice to the Authorities if any of the Authorities' Financed Vehicles are damaged or any defects are discovered and shall arrange for the necessary repairs and maintenance to be carried out forthwith. The Service Provider shall be responsible for all costs arising from any damage to or defect in any Authorities' Financed Vehicle.
- 32.23 If any Authorities' Financed Vehicle is stolen or written off the Service Provider shall at its own expense and regardless of any insurance claim provide a replacement vehicle for the Authorities' Financed Vehicle of at least the same type, model, specification and age and such replacement vehicle shall become a Authorities' Financed Vehicle.
- 32.24 The Service Provider shall be responsible for providing suitable vehicles for the provision of the Services in the event that the Authorities' Financed Vehicles are not available for the Elmbridge Commencement Date for any reason and shall be responsible for all risks and expense (including financing and running costs) in relation to such vehicles.
- 32.25 Other than the Authorities' Financed Vehicles listed in Schedule 27 (Authorities' Financed Vehicles) the Authorities are not obliged to provide finance for any other vehicles. The Service Provider shall secure finance at its own cost for any vehicles that are not specified in Schedule 27 (Authorities' Financed Vehicles) or for any vehicles that the Service Provider subsequently requires.
- 32.26 Where the list of Authorities' Financed Vehicles in Schedule 27 (Authorities' Financed Vehicles) contains vehicles which are scheduled to be purchased within the Initial Term then the Authorities will purchase the Vehicle on the same basis as those that are purchased for the Elmbridge Commencement Date.
- 32.27 The Service Provider shall be responsible for all costs incurred for the provision of suitable replacement Vehicles if any of the Authorities' Financed Vehicle reaches the end of its life prior to the end of the Initial Term or the estimated life of the Authorities' Financed Vehicle as set out in Schedule 27 (Authorities' Financed Vehicles).

- 32.28 Subject to clause 32.29, the Service Provider shall not dispose of, transfer, assign or deal with, mortgage or underlet the Authorities' Financed Vehicles or create any lien over them.
- 32.29 The Service Provider may, with the Authorities' prior written consent, dispose of any of the Authorities' Financed Vehicles that are to be withdrawn from the provision of the Services during the Term.
- 32.30 No later than six (6) months prior to the proposed date of withdrawal, the Service Provider shall provide the Authorities for their approval a list of the Authorities' Financed Vehicles which are to be retired, including details of the vehicle status, expected realisation value and any costs associated with the sale of the Authorities' Financed Vehicles, including details of the fee to be charged by the Service Provider for acting as agent for the disposal of such Authorities' Financed Vehicles (**Disposal List**).
- 32.31 Once the Disposal List is approved by the Authorities, the Service Provider, acting as an agent on behalf of the Authorities, shall dispose of such Authorities' Financed Vehicles in the most economically advantageous manner. For the avoidance of doubt, the Authorities' Financed Vehicles shall remain the property of the Authorities from and including the date of approval of the Disposal List until the date of disposal.
- 32.32 On the date of withdrawal of the Authorities' Financed Vehicles from the provision of the Services, the Service Provider shall (fair wear and tear excepted) ensure that each vehicle is in a roadworthy condition and complies with all Laws and regulations for use on the road in the United Kingdom for the purpose for which it was designed and in particular:
- (a) has an OfT V5 (log book) and an OfT Test Certificate VTG5 or equivalent valid for a period of not less than three (3) months from the date of expiry or termination;
 - (b) has all ancillary equipment the vehicle was fitted with;
 - (c) has no mechanical damage (fair wear and tear excepted consistent with the age of the vehicle at the date of withdrawal);
 - (d) all livery and lettering to be removed with the vehicle and the vehicle left in a presentable condition (fair wear and tear excepted consistent with the age of the vehicle at the date of withdrawal).
- 32.33 On disposal of the Authorities' Financed Vehicles set out in the Disposal List, the Service Provider shall update the Assets and Equipment Register and shall charge the Authorities its agent fee as set out in the approved Disposal List. The Service Provider shall invoice the Authorities its agent fee once the proceeds from sale, less any costs associated with the sale, of the vehicles on the Disposal List are received by the Authorities. The Authorities shall,

following receipt of the invoice, pay the Service Provider the agent fee within 10 Working Days.

33. TREATMENT OF ASSETS IN EVENT OF INSOLVENCY

- 33.1 During the six month period commencing on the occurrence of an Insolvency Event, the Authorities shall have the right, but not the obligation, to purchase (jointly or in the name of one of the Authorities or another nominee designated by them, or any one of them) any or all of the Service Provider Assets at market value, such value to be agreed by the parties acting reasonably, or failing agreement, to be determined by an independent valuer experienced in the valuation of similar assets, who, in the absence of agreement between the parties as to the identity of the valuer, will be appointed by the Authorities.
- 33.2 The Service Provider agrees that it will not at any time during the six month period offer or agree to sell or otherwise in any way dispose of or transfer or part with possession or control of any part or all of either of its legal or beneficial interest in any or all of the Service Provider Assets unless and until it has first offered the same to the Authorities to purchase in accordance with clause 33.1 and received written notification from the Authorities that neither they, nor any one of them, wish to purchase those Service Provider Assets.
- 33.3 If the Authorities wish to exercise the rights granted under clause 33.1, the Service Provider shall use all reasonable endeavours and co-operate to procure that the Service Provider Assets are sold to the Authorities free from any security, charges, lien or other encumbrance. The provisions of clause 31.15 shall apply.
- 33.4 The Authorities' rights under this clause 33 are without prejudice to, and in addition to, their rights under clause 38 (Step-In Rights) of this agreement.

34. BRANDING

- 34.1 The Service Provider shall obtain the Authorities' prior written consent of the proposed colour, livery and branding of the Assets used by the Service Provider in the provision of the Services.

35. BIODIVERSITY AND ENVIRONMENTAL PROTECTION

- 35.1 The Service Provider shall operate in a manner which complies with all applicable existing biodiversity Law and take all reasonable steps to assist the Authorities to fulfil their duties under the Natural Environment and Rural Communities Act 2006 (or its successor) with regard to biodiversity conservation and to assist the Authorities in meeting the objectives of any

biodiversity strategy developed by the Authorities and notified to the Service Provider from time to time and in performing the Services, the Service Provider shall at all times have regard to the purpose of conserving biodiversity.

35.2 The Service Provider shall take all reasonable steps to implement measures to ensure that the impact of any operation of the Service Provider in pursuance of its obligations under the agreement upon the environment is adequately and sufficiently considered, supervised, controlled and monitored in accordance with the Service Provider's Tender.

35.3 The Services shall be carried out by the Service Provider in such manner and with such materials and equipment to take reasonable steps to support the Authorities in implementing the policy "Woking 2050 – A Vision for a Sustainable Borough".

36. OWNERSHIP OF WASTE

36.1 All waste collected, received, or in the possession of the Service Provider or any of its Sub-Contractors is owned by the Authorities but is at the risk of the Service Provider, who shall be responsible for it up to and including the point of its delivery to a Delivery Site.

36.2 The Service Provider shall not, and shall procure that its Sub-Contractors shall not, enter any contract in respect of such collected recyclable waste.

37. SERVICE CONTINUITY

37.1 No later than one month prior to any Service Commencement Date, and with respect to the Elmbridge Commencement Date, the earlier of that date and the date falling 10 Working Days from and including the Effective Date, the Service Provider shall prepare and submit to the Authorities for their approval its proposed Service Continuity Plan. The proposed Service Continuity Plan shall be based upon the principles set out in Schedule 10 and the Service Provider's Tender, duly updated and augmented to:

- (a) correlate to any change in the Services arising between the date of submission of the Service Provider's Tender and the applicable Service Commencement Date; and
- (b) reflect the Service Provider's due diligence and knowledge acquired as a result of the mobilisation process for each Authority.

37.2 The Authorities shall provide the Service Provider with its comments on the proposed Service Continuity Plan within 10 Working Days of receipt. The Service Provider shall incorporate the Authorities' comments and suggestions

and issue a final agreed Service Continuity Plan to the Authorities within 10 Working Days of receipt of those comments and suggestions.

- 37.3 On issuing of the final agreed Service Continuity Plan, the Service Provider shall comply at all times with the relevant provisions of the Service Continuity Plan.
- 37.4 Following the declaration of a disaster or an interruption in respect of any of the Services, the Service Provider shall:
- (a) implement the Service Continuity Plan;
 - (b) continue to provide the affected Services to the Authorities in accordance with the Service Continuity Plan; and
 - (c) restore the affected Services to normal within the period laid out in the Service Continuity Plan.
- 37.5 To the extent that the Service Provider complies fully with the provisions of this clause 37 (and the reason for the declaration of a disaster or a service interruption was not breach of any of the other terms of this agreement on the part of the Service Provider), the KPIs to which the affected Services are to be provided during the continuation of the disaster shall not be the KPIs as referred to in clause 12 but shall be the KPIs set out in the Service Continuity Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

38. AUTHORITIES' STEP-IN RIGHTS

- 38.1 Notwithstanding any other provision of this agreement, and without prejudice to any other right or remedy of the Authorities, if a Step-In Trigger Event occurs, the Authorities may:
- (a) give notice to the Service Provider, requiring the Service Provider to take such reasonable steps as the Authorities consider necessary or expedient in the circumstances to stop, remedy, mitigate or otherwise deal with the consequences of the Step-In Trigger Event. Such reasonable steps may include (but shall not be limited to) the provision, or procurement of, additional or alternative services, temporary changes to the Services and actions reasonably necessary to secure that the Services can be maintained or provided; or
 - (b) exercise its Step-In Rights if the Authorities consider that the Service Provider is unable to, or will not, stop, remedy, mitigate or otherwise deal with the consequences of the Step-In Trigger Event.
- 38.2 If the Service Provider fails to take such reasonable steps notified to it in accordance with clause 38.1(a) within such reasonable time as either notified

to it by, or agreed between it and, the Authorities, the Authorities may exercise its Step-In Rights.

- 38.3 The Authorities shall notify the Service Provider of its decision to exercise its Step-In Rights and shall specify which of the Services are subject to the Step-In Rights.
- 38.4 In exercising its Step-in Rights, the Authorities shall use reasonable endeavours to comply with the Service Provider's obligations set out in the Specification and this agreement relating to those Services.
- 38.5 If the Authorities' decision to exercise its Step-In Rights relates to an event or circumstance falling within clauses (a) (b) (e) or (f) of the definition of Step-In Trigger Event, the Authorities have the right to require the Service Provider to either reimburse the Authorities for all costs (including administrative expenses and staff and overhead costs) reasonably incurred by the Authorities as a result of exercising its Step-In Rights or to reduce the Charges by the corresponding amount of such costs. This is in addition to, and shall not affect, the Authorities' right to make deductions and/or claim Performance Deductions in accordance with Schedule 3 up until the date on which the Authorities exercise its Step-in Rights (for those elements of the Services that are subject to the Step-in Rights).
- 38.6 If the Authorities' decision to exercise its Step-In Rights relates to an event or circumstance falling within clauses (c), (d) or (g) of the definition of Step-In Trigger Event, the Authorities shall pay the Service Provider the reasonable costs incurred by the Service Provider in connection with the exercise of the Step-In Rights in accordance with clause 39.
- 38.7 If the Authorities elect to exercise their Step-In Rights, the Service Provider shall fully assist and co-operate with the Authorities, such assistance and co-operation shall include (but not be limited to):
- (a) providing such access to, and granting rights for the Authorities to use, any and all assets and premises used by the Service Provider or any Sub-Contractor in connection with the provision of the Services or the performance of this agreement required by the Authorities to exercise its Step-In Rights;
 - (b) complying with the Authorities' reasonable instructions in respect of the management of the Service Provider's Personnel and/or allowing the Authorities to direct the Service Provider's Personnel;
 - (c) providing access to, and licences for, the Service Provider's ITS infrastructure and software and data in such format as requested by the Authorities; and
 - (d) all such other steps requested by the Authorities.

38.8 On the cessation of the Step-In Trigger Event or the Service Provider evidencing to the satisfaction of the Authorities that the Service Provider is able to resume the performance of the Services and its other obligations under this agreement, the parties shall:

- (a) agree a plan to enable the Authorities to cease to exercise its Step-In Rights and the Service Provider to resume performance of the Services and its other obligations under this agreement as soon as reasonably practicable and in accordance with an agreed timescale;
- (b) each take all such steps and actions to give effect to such an agreed plan.

38.9 Any dispute arising under this clause shall be determined in accordance with clause 52 (Dispute Resolution).

CHARGES AND PAYMENT

39. PAYMENT

39.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms and conditions of this agreement, each of the Authorities shall pay its proportion of the Charges to the Service Provider in accordance with the terms of this agreement.

39.2 The Charges shall be calculated in accordance with Schedule 7.

39.3 Where the Authorised Officer instructs additional Services and such additional Services are to be provided in accordance with the unit rates set out in the Dayworks Unit Rates in the Pricing Schedule, the Authorised Officer shall (save where the contrary is notified to the Service Provider) approve the scope of the Services (including but not limited to the approach, the resourcing in terms of Assets and Service Provider's Personnel, materials and completion dates, where applicable) and the additional Services shall be undertaken and the Charges calculated in accordance with the agreed scope.

39.4 The Service Provider shall invoice the Authorities for:

- (a) payment of the core Charges on the first day of each calendar month, such invoice to be for those items specified in paragraph 2.1 of Schedule 7, and
- (b) payment of the variable Charges within 5 Working Days of the agreement of the Performance Management Report in accordance with paragraph 2.2 of Schedule 9, such invoice to include a breakdown of the Charges by Authority Area. Any such invoices shall take into account any Performance Deductions, other deductions and any

other adjustments which have accrued in the previous period as set out in Schedule 7.

- 39.5 The Authorities shall pay, or shall procure the payment through the Authorities' Related Party, of the Charges which have become payable within 30 days of receipt of a valid and undisputed invoice from the Service Provider.
- 39.6 The Service Provider shall include in any Sub-Contract which it awards provisions which require the same payment terms as those set out in clause 39.5 above.
- 39.7 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authorities following delivery of a valid VAT invoice. The Service Provider shall indemnify each of the Authorities against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authorities, or any Authority, at any time in respect of the Service Provider's failure to account for, or to pay, any VAT relating to payments made to the Service Provider under this agreement.

40. PERFORMANCE DEDUCTIONS AND COMPENSATION EVENTS

- 40.1 If the Service Provider commits a Service Failure, the Service Provider shall pay to the Authorities the Performance Deduction(s) as calculated in accordance with Schedule 3.
- 40.2 The following are Compensation Events:
 - (a) Historic Contamination; and
 - (b) failure by an Authority to provide an Authority Asset.
- 40.3 In the event either party considers that a Compensation Event has or is likely to occur, a party may give notice in writing to the other party. The affected party shall set out the details of the Compensation Event, including its commencement date, the cause and estimated duration, together with the likely impact on the Services and the financial or other impact on the Service Provider. In quantifying the impact on the Service Provider, the Service Provider shall provide supporting evidence, including but not limited to reference to the Contract Inception Report (or successor Annual Contract Report or latest Quarterly Contract Report) and Open Book Data and this shall be the proposed compensation amount. Provided that the Compensation Event is not attributable to any act, neglect or failure to take reasonable precautions against the relevant Compensation Event and the Service Provider has used all reasonable endeavours to mitigate the impact of the Compensation Event on its performance of its obligations under this agreement, the parties shall agree the compensation amount within 20

Working Days. Any dispute in relation to this clause shall be dealt with in accordance with the Dispute Resolution Procedure.

41. COMMERCIAL WASTE COLLECTION SERVICE

- 41.1 The Authorities and the Service Provider acknowledge that the Authorities wish to provide a Commercial Waste Collection Service as provided for in the Contract Notice.
- 41.2 On not less than three months' written notice, which shall not take effect before the Elmbridge Commencement Date, the Authorities may require the Service Provider to commence the provision of the Commercial Waste Collection Service.
- 41.3 The Service Provider shall pay to the Authorities the Commercial Waste Collection Service Income which has become payable by netting such income against the Charges payable by the Authorities in accordance with clause 39.
- 41.4 The Commercial Waste Collection Service Income is stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Service Provider following delivery of a valid VAT invoice.
- 41.5 The Service Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable or payable to the Authorities pursuant to this agreement. Such records shall be retained for inspection by the Authorities for seven years from the end of the Contract Year to which the records relate.

42. PRE-PRICED OPTIONAL SERVICES

- 42.1 On not less than three months' written notice, which shall not take effect prior to the (a) Woking Commencement Date for Services to be provided in the WBC Authority Area and (b) the SHBC Commencement Date for Services to be provided in the Surrey Heath Authority Area, the Authorities may require the Service Provider to commence the provision of any of the following Services:
 - (a) Garden Waste Administration Service in respect of the WBC Authority Area;
 - (b) Garden Waste Administration Service in respect of the SHBC Authority Area;
 - (c) Service Users' Contact Management Service in respect of the WBC Authority Area;
 - (d) Service Users' Contact Management Service in respect of the SHBC Authority Area.

42.2 On not less than three months' written notice, the Authorities may require the Service Provider to commence the provision of any of the following Services (as defined in the Specification):

- (a) Removal and Management of Highway Weeds;
- (b) Highways Hard Surface Weeds;
- (c) Injurious and Noxious Weeds;
- (d) Additional Weed Control;
- (e) Nappies and Absorbent Hygiene Products Collection Service (AHP); or
- (f) bulking operations in accordance with paragraph 18.12 of the Specification at the Delivery Site 'Surrey Heath depot' referred to in Table 1 of the Specification.

43. PAYMENT DISPUTES AND LATE PAYMENTS

43.1 Where any party disputes any sum to be paid or received by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 54 (Dispute Resolution). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 5 Working Days after resolution of the dispute between the parties.

43.2 Subject to clause 43.1, interest shall be payable on the late payment of any undisputed Charges or Commercial Waste Collection Service Income properly invoiced or due under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Service Provider shall not suspend the supply of the Services if any payment is overdue.

44. SET OFF

44.1 The Authorities may retain or set off any sums owed to them or to any Authorities' Related Party by the Service Provider which have fallen due and payable against any sums due to the Service Provider under this agreement or any other agreement pursuant to which the Service Provider or any Associated Company of the Service Provider provides goods or services to the Authorities or to the Authorities' Related Party.

44.2 The Service Provider shall make any payments due to the Authorities or to any Authorities' Related Party without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authorities or by any Authorities' Related Party to the Service Provider.

STAFF

45. REPRESENTATIVES

- 45.1 The Authorities' Authorised Officer and the Service Provider's Representative shall act as the parties' representatives in connection with the provision of the Services and generally in connection with this agreement.
- 45.2 The Authorities shall be entitled to replace the Authorities' Authorised Officer and shall notify the Service Provider as soon as practicable of any such replacement.
- 45.3 The Service Provider's Representative shall have the authority to act on behalf of the Service Provider on the matters for which he is expressed to be responsible.
- 45.4 The Service Provider shall not remove or replace the Service Provider's Representative unless:
- (a) requested to do so by the Authorities;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authorities' satisfaction;
 - (d) the person resigns or is dismissed (other than by reason of redundancy) from their employment with the Service Provider; or
 - (e) the Service Provider obtains the prior written consent of the Authorities.
- 45.5 The Service Provider shall inform the Authorities of the identity and background of any replacement for the Service Provider's Representative as soon as a suitable replacement has been identified. The Authorities shall be entitled to interview any such person and may object to any such proposed appointment within 10 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, they consider the proposed replacement to be unsuitable for any reason.

46. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

- 46.1 At all times, the Service Provider shall ensure that:
- (a) each of the Service Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which he is engaged;
 - (b) there is an adequate number of Service Provider's Personnel to provide the Services properly;

- (c) only those people who are authorised by the Service Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - (d) all of the Service Provider's Personnel comply with all of the Authorities' policies including those that apply to persons who are allowed access to the applicable Authority Premises.
- 46.2 The Authorities may refuse to grant access to, and remove, any of the Service Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 46.3 The Service Provider shall replace any of the Service Provider's Personnel who the Authorities reasonably decide have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 46.4 The Service Provider shall maintain up-to-date personnel records on the Service Provider's Personnel engaged in the provision of the Services and shall provide information to the Authorities as the Authorities reasonably request on the Service Provider's Personnel. The Service Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 46.5 The Service Provider shall use all reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 47. **TUPE**
- 47.1 The parties agree that the provisions of Schedule 14 (as amended and supplemented by the provisions of Schedule 15 in relation to a Partner Organisation, who by acceding to this agreement, is undertaking a first-generation outsourcing or in relation to any of the Authorities who in relation to certain of the Services is undertaking a first generation outsourcing) shall apply to any Relevant Transfer of staff under this agreement.
- 47.2 The Authorities give no warranty as to the accuracy or completeness of the Employee Liability Information supplied to the Service Provider directly or indirectly by the relevant Incumbent Contractor.

CONTRACT MANAGEMENT

48. REPORTING AND MEETINGS

- 48.1 The Service Provider shall provide the reports in the form and at the intervals set out in Schedule 8 (Financial Reports) and Schedule 9 (Contract Management).
- 48.2 The Authorised Representatives shall meet in accordance with the details set out in Schedule 9 and the Service Provider shall, at each meeting, present its previously circulated Performance Management Reports and Financial Reports.

49. MONITORING

- 49.1 The Service Provider is responsible for making available to the Authorities evidence that the Services have been delivered in accordance with the Specification and otherwise in accordance with this agreement during any given period.
- 49.2 The Authorities may monitor the performance of the Services by the Service Provider as set out in Schedule 9 (Contract Management) or otherwise.
- 49.3 The Service Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authorities in carrying out the monitoring referred to in clause 49.2 at no additional charge to the Authorities.

50. CHANGE CONTROL

- 50.1 Any requirement for a Change shall be subject to the Change Control Procedure.

51. CHANGE IN LAW

- 51.1 If a Qualifying Change in Law occurs or is shortly to occur, the Service Provider may write to the Authorities to express an opinion on its likely effects, giving details of its opinion of:
- (a) any necessary change in the Services;
 - (b) whether any changes are required to the terms of this agreement to deal with the Qualifying Change in Law;
 - (c) whether relief from compliance with its obligations is required during the implementation of any relevant Qualifying Change in Law;
 - (d) any loss of or gain in revenue that will result from the relevant Qualifying Change in Law;

- (e) any estimated change in costs that directly results from the Qualifying Change in Law; and
- (f) any capital expenditure of the Service Provider that is required as a result of a Qualifying Change in Law taking effect during the Term,

in each case giving full details of the procedure for implementing the change in the Services. Responsibility for the costs of implementation (and any resulting variation to the Charges or Commercial Waste Collection Service Income), shall be dealt with in accordance with clauses 51.2 and 51.3.

51.2 As soon as practicable after receipt by the Authorities of any notice from the Service Provider under clause 51.1, the parties shall discuss the issues referred to in clause 51.1 and any ways in which the Service Provider can reasonably mitigate the effect of the Qualifying Change in Law, including:

- (a) providing evidence that the Service Provider has (or its Sub-Contractors have) minimised any increase in costs and maximised (a) any revenues generated through contractual or other arrangements entered into with third parties in accordance with this agreement, or (b) any reduction in costs (including, where practicable, the use of competitive quotes);
- (b) demonstrating how any capital expenditure to be incurred has been measured in a cost effective manner including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Service Provider;
- (c) giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the provisions of the Services; and
- (d) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the Service Provider's opinion on the likely effects of the Qualifying Change in Law.

51.3 Following the provision of any additional information under clause 51.2, the parties shall agree any required change to the Services and/or the terms of this agreement to deal with the Qualifying Change in Law in accordance with the Change Control Procedure and such change shall take effect as an agreed variation of this agreement from the date agreed between the parties.

51.4 For the avoidance of doubt, any Change in Law which is not a Qualifying Change in Law shall be the responsibility of the Service Provider to deal with and implement at no extra cost to the Authorities and the Service Provider shall not be entitled to relief from compliance with its obligations under this

agreement or any increase in the Charges (or decrease in the Commercial Waste Collection Service Income) as a result of such change.

52. MANDATORY SEPARATE COLLECTION ARRANGEMENTS

- 52.1 If, after the date of this agreement, the Authorities deem it necessary to cease commingled collection of recyclable waste and to adopt separate collection of recyclable waste (**Separate Collection**) in order to comply with any one of the Authorities' statutory duties under the Waste (England and Wales) Regulations 2011, the Authorities shall give written notice to the Service Provider of this requirement.
- 52.2 As soon as practicable after receipt by the Service Provider of any notice from the Authorities under clause 52.1, the parties shall review and agree the effect of Separate Collection on the Services, the implementation approach, and the date or dates by which the Service Provider shall provide the Services (**Separate Collection Service Commencement Date(s)**).
- 52.3 The Service Provider shall provide the Authorities with its estimate of its costs for implementing Separate Collection, including any costs associated with the termination of the comingled collection Services, such as those relating to vehicles inappropriate for providing Separate Collection. In estimating its implementation costs, the Service Provider shall evidence to the Authorities' satisfaction the ways in which the Service Provider (or its Sub-Contractors have) shall mitigate such costs.
- 52.4 The Authorities may approve the estimate or suggest amendments to the estimate which the Service Provider shall agree and incorporate. Where the Authorities consider that the estimate is not reasonable or proportionate, or where the Service Provider and the Authorities are unable to agree an amended estimate within 40 Working Days, the Authorities shall refer the estimate to the Dispute Resolution Procedure.
- 52.5 Subject to clause 52.6, the Charges shall be reviewed in accordance with the Change Control Procedure.
- 52.6 Notwithstanding the application of the Change Control Procedure to determine and agree the impact on the Charges, within three months of each Separate Collection Service Commencement Date(s) the Service Provider shall review these Charges to identify any changes in ways of working on the part of the Service Provider or the Authorities that would enable the Separate Collection to be delivered at lower costs.
- 52.7 The implementation costs of Separate Collection as agreed or determined (as the case may be) shall be borne by the Authorities.

53. **BENCHMARKING AND CONTINUOUS IMPROVEMENT**

53.1 The parties shall comply with the provisions of Schedule 12 (Benchmarking).

53.2 The Service Provider shall have an on-going obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Service Provider shall identify and report to the Authorities' Authorised Officer on the anniversary of the first Service Commencement Date and at least once in each Contract Year for the remainder of the Term on:

- (a) the emergence of new and evolving relevant technologies which could improve the Services;
- (b) measures or services that could be adopted, or infrastructure that could be developed by the Authorities, the Waste Disposal Authority, third parties including waste processing/recycling facilities, Service Users to improve the quality of recycle, the recycling participation rates and the recycling capture rate (being the proportion of waste that is placed into recycling containers rather than refuse containers) in the Authorities' Area;
- (c) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
- (d) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties, including but not limited to the Waste Disposal Authority or waste transfer stations/material recovery facilities, or the Authorities which might result in efficiency or productivity gains or in reduction of operational risk;
- (e) changes in ways of working on the part of the Service Provider or the Authorities that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authorities.

53.3 Any potential Changes highlighted as a result of the Service Provider's reporting in accordance with clause 53.2 shall be addressed by the parties using the Change Control Procedure.

54. **DISPUTE RESOLUTION**

54.1 If a dispute arises out of or in connection with this agreement or the performance, validity, interpretation or enforceability of it including any dispute arising before or after termination of this agreement (**Dispute**) then except as expressly provided in this agreement or where such Dispute is a Fast

Track Dispute in which case the Fast Track Dispute Resolution Procedure shall apply, the parties shall follow the procedure set out in clause 54.2.

54.2 In the event of a Dispute:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 20 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Contract Partnering Board who shall attempt in good faith to resolve it; and
- (c) if the Contract Partnering Board is for any reason unable to resolve the Dispute within 20 Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 20 Working Days after the date of the ADR notice.

54.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 87 which clause shall apply at all times.

54.4 Nothing in this clause, including but not limited to the giving of notice in accordance with clause 54.2, shall prevent either of the parties from seeking emergency injunctive relief from the courts at any time.

55. **SUB-CONTRACTING AND ASSIGNMENT**

55.1 Subject to clause 55.2, the Service Provider shall not assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the Authorities.

55.2 The Service Provider may provide or procure the provision of the Services from a Sub-Contractor of sound financial standing and good repute and whose identity has been notified to the Authorities by the Service Provider and approved by the Authorities prior to the appointment of such Sub-Contractor, such approval not to be unreasonably withheld or delayed.

- 55.3 For the purposes of clause 55.2, it shall not be unreasonable for the Authorities to withhold their approval of a Sub-Contractor who, in their reasonable opinion, among other things:
- (a) would, or is likely to, cause damage to the reputation of the Authorities;
 - (b) is not a fit and proper person to be engaged or employed in or in connection with the provision or performance of any part of the Services; or
 - (c) may present an actual or potential risk to the health, safety or welfare of any officer, servant, employee or agent of the Authorities, or any other contractor or sub-contractor of the Authorities (excluding for the avoidance of doubt the Service Provider and the Service Provider's Sub-Contractors and/or supply chain.
- 55.4 The Authorities may also have regard to how any proposed Sub-Contractor may comply with TUPE.
- 55.5 In the event that the Service Provider enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the Authorities for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and shall be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms;
 - (c) ensure that such Sub-Contract contains a provision:
 - (i) requiring the Service Provider to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice; and
 - (ii) a right for the Authorities to publish the Service Provider's compliance with its obligation to pay undisputed invoices within the specified payment period; and
 - (d) provide a copy, at no charge to the Authorities, of any such Sub-Contract on receipt of a request for such by the Authorities' Authorised Representative.
- 55.6 Where the provision of any part of the Services by a Sub-Contractor involves a Relevant Transfer, the Service Provider shall provide the Authorities with such information as may be requested by the Authorities as to how the Service Provider and such Sub-Contractor shall comply with TUPE.

55.7 The Authorities shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement (in part or in full) to:

- (a) any other body which substantially performs any of the functions that previously had been performed by one or more of the Authorities; or
- (b) to any other body, including but not limited to a special purpose vehicle established by the Authorities which satisfies the criteria set out in Regulation 12(1) or 12(7) of the Public Contract Regulations 2015.

56. PAYMENT OF SUB-CONTRACTORS

56.1 The Service Provider shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within 30 days from the receipt of a valid invoice;
- (b) include within the Service Report produced by it pursuant to Schedule 9 a summary of its compliance with clause 56.1(a), such data to be certified each quarter by a director of the Service Provider as being accurate and not misleading.

56.2 Notwithstanding any provision of clause 64 (Confidentiality) and clause 83 (Publicity), if the Service Provider notifies the Authorities (whether in the Service Report or otherwise) that the Service Provider has failed to pay a Sub-Contractor's undisputed invoice within 30 days of receipt, or the Authorities otherwise discover the same, the Authorities shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

LIABILITY

57. INDEMNITIES

The Service Provider shall indemnify and keep indemnified the Authorities against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence), breach of any statutory duty, default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, breach of statutory duty wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of statutory duty, breach of this agreement or applicable law by the Authorities or their Representatives (excluding any Service Provider's Personnel).

58. **LIMITATION OF LIABILITY**

- 58.1 Subject to clause 58.3, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.
- 58.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 58.3 Subject to clause 58.4, the Service Provider's liability:
- (a) for loss of or damage to property (including property belonging to the Authorities or for which they are responsible) shall be:
 - (i) in respect of insured losses, the value of the cover of the Required Insurances, including any losses which should have been recoverable under a policy of insurance; and
 - (ii) no greater than £20,000,000 (twenty million pounds) in each Contract Year in respect of uninsured losses;
 - (b) for Performance Deductions, shall be no greater than an amount equal to 10.6% of the Annual Contract Value in each Contract Year;
 - (c) save with respect to claims to which clause 58.3 (d) applies, in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed £20,000,000 (twenty million pounds) in each Contract Year in respect of uninsured losses and being no greater than the Required Insurances in respect of insured losses (including any losses which should have been recoverable under a policy of insurance);
 - (d) is unlimited in respect of:
 - (i) the indemnities in Schedule 14;
 - (ii) any breach of clause 73; and
 - (iii) the Service Provider's wilful default.
- 58.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute; or

- (d) any other act or omission, liability for which may not be limited under any applicable law.

59. **INSURANCE**

59.1 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £20,000,000 in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than the higher of £10,000,000 or any legal requirement for the time being in force in relation to any one claim or series of claims;
- (c) motor insurance with unlimited death and bodily injury cover and such insurance covering damage by the Collection Vehicles to third party property with a limit of indemnity of not less than £20,000,000 in relation to any one claim or series of claims;
- (d) buildings insurance for any premises which is not an Authorities' Premises from which the Service Provider performs its obligations under the agreement;
- (e) contents insurance to cover the value of all assets and items at any of the Authorities' Premises for which the Service Provider is responsible or has an insurable interest, the value of which should be adjusted and updated by the Service Provider to ensure adequate cover;
- (f) professional indemnity insurance with a limit of indemnity of not less than £500,000 in relation to any one claim or series of claims; and
- (g) any other insurances which may be required by law,

(the **Required Insurances**) in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss.

59.2 The Service Provider shall insure and at all times keep insured the Authorities' Financed Vehicles as required by Law from time to time in force and against such further risks as the Authorised Officer may from time to time require. Such insurance shall have the interest of the Authorities (or the Authorities' Related Party) endorsed on the policy and the Service Provider shall duly pay all premiums for such insurance and produce to the Authorised Officer on request receipts for such insurance and shall not do or suffer or permit anything to be done which might prejudice the policy. All money which may at any time be received or receivable under any such insurance shall be applied

in replacing or repairing the Authorities' Financed Vehicle lost, damaged or destroyed or in such manner as the Authorised Officer may direct.

- 59.3 The Authorities shall arrange buildings insurance in respect of any of the Authorities' Premises in accordance with the Lease(s). Such buildings insurance shall be held by the Authorities (or any one of them or each of them) and the Authorities shall use all reasonable endeavours to procure that the Service Provider's interest shall be noted on the policy(ies).
- 59.4 If the whole or part of any of the Authorities' Premises is damaged or destroyed (whether by an Insured Risk as defined in the relevant Lease) or otherwise, so as to make it or them in whole or in part unfit for occupation or use, the Charges shall, subject to clause 59.5, be adjusted by reference to the Contract Inception Report according to the nature and extent of the damage or destruction for a period not exceeding three years, or if earlier, the date on which the affected Authorities' Premises is made fit for occupation and use.
- 59.5 If any loss of rent insurance has been made ineffective or payment has been refused by the Authorities' insurers because of any deliberate or wilful act, negligent default or omission of the Service Provider, there shall be no adjustment to the Charges.
- 59.6 Where any Required Insurances are provided by an affiliate of the Service Provider, the Service Provider shall provide to the Authorities on the Effective Date and thereafter within 10 Working Days of written request by the Authorities evidence of good financial standing of the relevant affiliate in a form satisfactory to the Authorities.
- 59.7 The Service Provider shall ensure that the Required Insurances (with the exception of professional indemnity insurance) shall contain an indemnity to principals clause under which the Authorities, or any one of them, shall be indemnified in respect of claims made against the Authorities or any one of them arising out of or in connection with the Services and/or this agreement and for which the Service Provider is legally liable.
- 59.8 The Service Provider shall take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers and shall promptly notify the insurers in writing of any relevant material fact under any Required Insurances of which the Service Provider is or becomes aware.
- 59.9 The Service Provider shall not take any action or fail to take any action (or insofar as is reasonably within its power) permit anything to occur in relation

to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.

59.10 The Service Provider shall notify the Authorities in writing at least 20 Working Days prior to the cancellation, suspension, amendment, termination or non-renewal of any of the Required Insurances, save where a termination occurs as a result of a change of insurer in respect of any of the Required Insurances.

59.11 The Service Provider shall give the Authorities, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

59.12 The Service Provider shall:

- (a) promptly notify to insurers any matter arising from or in relation to the Services and/or this agreement for which it might be entitled to claim under any of the Required Insurances. If the Authorities, or any one of them, receive a claim relating to or arising out of the Services and/or this agreement, the Service Provider shall co-operate with, and assist them or it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner;
- (b) retain full details of any and all potential, failed and successful claims under or in connection with any of the Required Insurances during the Term and for a further period of not less than six years after the Term and shall provide as soon as reasonably practicable any information relating to such claims to the Authorities on their request.
- (c) notify the Authorities within 10 Working Days of notification of any claim which it considers likely to exceed £25,000 (Indexed) or in aggregate £75,000 (Indexed) on any of the Required Insurances together with full details of any incident giving rise to the claim.

59.13 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Authorities may make alternative arrangements to protect their interests and may recover the costs of such arrangements from the Service Provider.

59.14 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the agreement.

59.15 The Service Provider shall hold and maintain professional indemnity insurance in accordance with clause 59.1(f) for a minimum of six years following the expiration or earlier termination of the agreement.

60. **PROCUREMENT CHALLENGE**

- 60.1 If this agreement is the subject to a genuine and substantive legal or procurement challenge of any nature and/or is deemed by a relevant authority to be ineffective or otherwise unenforceable or to be in breach of any law or regulation, including any challenge to the lawfulness of any one of the Authorities' decision to award this agreement to the Service Provider (**Procurement Challenge**), the parties shall co-operate in good faith to determine the best way to mitigate the impact of the Procurement Challenge.
- 60.2 If this agreement is declared ineffective or otherwise unenforceable by a court of final jurisdiction and this agreement is brought to an end, the provisions of clause 74 (Exit Management) shall apply.

INFORMATION

61. **FREEDOM OF INFORMATION**

- 61.1 The Service Provider acknowledges that the Authorities, and each one of them, are subject to the requirements of the FOIA and the EIRs. The Service Provider shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authorities to enable the Authorities, or any one of them, to comply with their obligations under the FOIA and EIRs;
 - (b) transfer to the Authorities all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authorities with a copy of all Information belonging to the Authorities (in accordance with Part B of Schedule 19) requested in the Request For Information which is in its possession or control in the form that the Authorities require within 5 Working Days (or such other period as the Authorities may reasonably specify) of the Authorities' request for such Information; and
 - (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authorities.
- 61.2 The Service Provider acknowledges that the Authorities, or any one of them, may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information or that identified as being subject to an FOIA exemption in Part A of Schedule 19) without consulting or obtaining consent from the Service Provider. The Authorities shall take reasonable steps to notify the Service Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is

permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authorities, or any one of them, shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

62. DATA PROTECTION

62.1 The Service Provider shall (and shall procure that any of its Service Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.

62.2 Notwithstanding the general obligation in clause 62.1, where the Service Provider is processing Personal Data as a Data Processor for the Authorities, the Service Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (a) provide the Authorities with such information as the Authorities may reasonably require to satisfy themselves that the Service Provider is complying with its obligations under the DPA;
- (b) promptly notify the Authorities of any breach of the security measures required to be put in place pursuant to clause 62.2; and
- (c) ensure it does not knowingly or negligently do or omit to do anything which places the Authorities in breach of the Authorities' obligations under the DPA.

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

63. WHISTLEBLOWING

63.1 The Service Provider shall comply in all respects with the Authorities' whistleblowing policy and with the Public Interest Disclosure Act 1998 ("hereinafter PIDA"). In particular (but without limitation) the Service Provider agrees:

- (a) to accept and adopt the Authorities' whistleblowing policy as a procedure for the purposes of s.43C(2) of PIDA and the Service Provider agrees and acknowledges that its employees are authorised to use and rely upon the said procedure; and

- (b) that to the extent that the whistleblowing policy impose duties on or grant rights, protections or immunities to employees or agents of the Authorities, the Service Provider agrees and irrevocably undertakes to impose similar duties and grant similar rights, protections or immunities to the Service Provider's Personnel and agents and to any Sub-Contractors.
- 63.2 Without limiting the generality of clause 63.1, the Service Provider agrees to report to the Authorities in accordance with the whistleblowing policy and guidelines any circumstances relating to or arising out of this agreement (including the entering into thereof and procurement of goods, services and supplies for the implementation thereof) and the performance of the Services, which give rise to a reasonable belief that one or more of the following matters (referred to in this clause as "instances of malpractice") has occurred, is occurring or is likely to occur:
 - (a) a criminal offence;
 - (b) a breach or failure to comply with any lawful duty (including, without limitation, negligence and/or breach of statutory, contractual, fiduciary, administrative law or other duty);
 - (c) a failure to uphold the Seven Principles of Public Life;
 - (d) miscarriage of justice;
 - (e) danger to health and safety;
 - (f) damage to the environment;
 - (g) any other matter designated as malpractice in the whistleblowing policy;
 - (h) concealment of any of the above.
- 63.3 Without limiting the generality of clause 63.1, in the event that any employee, agent or Sub-Contractor of the Service Provider should make a report to the Authorities (or to any other person authorised by law) pursuant to this clause 63, the Service Provider warrants that it shall use its best endeavours to ensure that such person does not suffer any form of retribution, victimisation or detriment as a consequence of having made such report.
- 63.4 The Service Provider agrees to indemnify the Authorities in respect of any loss or damage caused by or arising out of a failure on the part of the Service Provider to report, within a reasonable time, any instances of malpractice in accordance with this clause 63, the Authorities' whistleblowing Policy and/or PIDA 1998.

64. **CONFIDENTIALITY**

64.1 Subject to clause 64.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

64.2 Clause 64.1 shall not apply to any disclosure of information:

- (a) required by any applicable law or information publication scheme, provided that clause 61.2 shall apply to any disclosures required under the FOIA or the EIRs and clause 65.3 shall apply to any disclosures and/or publications required under the Local Government Transparency Code 2015 (or its successor(s) or equivalent);
- (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
- (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 64.1;
- (d) by the Authorities, or any one of them, of any document to which it or they is or are a party and which the parties to this agreement have agreed contains no commercially sensitive information;
- (e) to enable a determination to be made under clause 54 (Dispute Resolution);
- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (g) by the Authorities, or any one of them, to any other department, office or agency of the Government; and
- (h) by the Authorities, or any one of them, relating to this agreement.

64.3 On or before the Termination Date the Service Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Authorities or securely destroyed.

65. **RIGHT TO PUBLISH**

65.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs or Data Protection Legislation (**Information Rights Legislation**), the content of this agreement is not confidential information. The Authorities shall be responsible for determining at their absolute discretion whether any of the

content of this agreement is exempt from disclosure in accordance with the provisions of the Information Rights Legislation.

65.2 Notwithstanding any other term of this agreement, the Service Provider consents to the Authorities, or any one of them, publishing this agreement in its entirety, including from time to time changes to the agreement, to the general public.

65.3 Although the Authorities may, but are not obliged to, consult with the Service Provider to inform their view regarding the application of any exemptions or any redactions, the Authorities shall make the final decision at their absolute discretion.

65.4 The Service Provider shall assist and co-operate with the Authorities to enable the Authorities, or any one of them, to publish this agreement.

66. AUDIT

66.1 During the Term and for a period of 6 years after the Termination Date, the Authorities, or any one of them, may conduct an audit of the Service Provider for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
- (b) to verify the Open Book Data;
- (c) to review the integrity, confidentiality and security of any data relating to any one of the Authorities or any Service Users;
- (d) to review the Service Provider's compliance with this agreement, including but not limited to, DPA, the FOIA, in accordance with clause 62 (Data Protection) and clause 61 (Freedom of Information) and any other legislation applicable to the Services;
- (e) to review the Service Provider's quality management systems (including health and safety risk management systems and reporting);
- (f) to review any records created during the provision of the Services;
- (g) to review any books of account and the internal contract management accounts kept by the Service Provider in connection with the provision of the Services;
- (h) to review the integrity and content of any Financial Report or Performance Management Report;
- (i) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security

and in these circumstances the Authorities shall have no obligation to inform the Service Provider of the purpose or objective of its investigations;

- (j) to identify or investigate any circumstances which may impact upon the financial stability of the Service Provider, the Guarantor and/or any key Sub-Contractors or their ability to perform the Services;
- (k) to carry out the internal and statutory audits of the Authorities, or any one of them, and certification of any one of the Authorities' accounts;
- (l) to inspect the Assets, including any Authorities' Intellectual Property, equipment and facilities, for the purposes of ensuring the Assets and the Authorities' Assets are secure and the Assets and Equipment Register is up-to-date;
- (m) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which any one of the Authorities has used its resources;
- (n) to verify the accuracy and completeness of any management reports delivered or required by this agreement.

66.2 Except where an audit is imposed on the Authorities, or any one of them, by a regulatory body, the Authorities may not conduct an audit under this clause 66 more than twice in any calendar year, except those which are 'follow-up' audits for the purposes of verifying the position with regard to any areas of concern identified by such an audit.

66.3 The Authorities may require in writing that an audit is undertaken by the Service Provider's own internal audit function for any of the purposes set out in clause 66.1 on condition that:

- (a) the relevant audit is undertaken as soon as reasonably practicable; and
- (b) the Authorities, or any one of them, or their or its agents, have unfettered access to:
 - (i) the resultant audit reports; and
 - (ii) all relevant members of the Service Provider's internal audit team for the purposes of reviewing and understanding such audit reports.

66.4 The Authorities shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services.

- 66.5 Subject to the Authorities' obligations of confidentiality, the Service Provider shall on demand provide the Authorities, or any one of them, and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Service Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Service Provider's Personnel.
- 66.6 The Authorities shall endeavour to (but are not obliged to) provide at least 10 Working Days notice of their or, where possible, a regulatory body's, intention to conduct an audit.
- 66.7 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Service Provider in which case the Service Provider shall reimburse the Authorities for all the Authorities', or any one of the Authorities', reasonable costs incurred in the course of the audit.
- 66.8 If an audit identifies that:
- (a) the Service Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Service Provider's failure relates to a failure to provide any information to the Authorities about the Charges, proposed Charges or the Service Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
 - (b) the Authorities have overpaid any Charges, the Service Provider shall pay to the Authorities within 10 Working Days the amount overpaid or the Authorities may deduct the relevant amount from the Charges if the Service Provider fails to make this payment; and
 - (c) the Authorities have underpaid any Charges, the Authorities shall pay to the Service Provider the amount of the under-payment less the cost of audit incurred by the Authorities, or any one of them, if this was due to a default by the Service Provider in relation to invoicing within 10 Working Days.

67. LOCAL GOVERNMENT OMBUDSMAN

67.1 Under the provisions of section 26(1) of the Local Government Act 1974 the Service Provider should be aware that it could be subject to investigation by the Local Government Ombudsman if a complaint is made about its actions when undertaking work on behalf of the Authorities.

67.2 Where any investigation by the Local Government Ombudsman takes place the Service Provider shall:

- (a) provide any information requested in the timescale specified;
- (b) attend any meetings as required and permit its Service Provider's Personnel to attend;
- (c) promptly allow access to an investigation of any documents deemed to be relevant;
- (d) allow itself and any employees deemed to be relevant to be interviewed;
- (e) allow itself and any employees to appear as witness in any ensuing proceedings; and;
- (f) co-operate fully and promptly in every way required by the Local Government Ombudsman during the course of that investigation.

67.3 In the event that following any investigation the Local Government Ombudsman finds maladministration and/or injustice as a result of fault by the Service Provider, the Service Provider shall on demand reimburse the Authorities for any payments made by the Authorities, or any of the Authorities, to a complainant.

67.4 The Service Provider shall reimburse the Authorities for any payments made by the Authorities, or any of them, under the terms of an early settlement agreed without a formal investigation and report of a complaint made to the Local Government Ombudsman in connection with this agreement.

68. INTELLECTUAL PROPERTY

68.1 With the exception of the Service Provider's Corporate IPR, then in the absence of prior written agreement by the Authorities to the contrary, all Intellectual Property created by the Service Provider or any employee, agent or subcontractor of the Service Provider:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Authorities on creation.

- 68.2 The Authorities shall grant the Service Provider a non-exclusive, non-transferable licence for the Term to use any Intellectual Property which vest in them under clause 68.1 for the purposes of providing or improving the Services in accordance with this agreement.
- 68.3 The Service Provider shall indemnify the Authorities against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authorities' acts or omissions.

TERMINATION

69. TERMINATION FOR BREACH

- 69.1 The Authorities may terminate this agreement in whole or part with immediate effect by the service of written notice on the Service Provider in the following circumstances:
- (a) if the Service Provider is in breach of any material obligation under this agreement or any Lease provided that if the breach is capable of remedy, the Authorities may only terminate this agreement under clause 69.1 if the Service Provider has failed to remedy such breach within 28 days of receipt of notice from the Authorities (a **Remediation Notice**) to do so;
 - (b) if regulation 73(1) (b) of The Public Contracts Regulations 2015 applies to the Service Provider;
 - (c) if a Consistent Failure has occurred provided that the Authorities may only terminate this agreement under clause 69.1 if the Consistent Failure has not been remedied in accordance with the provisions of clause 69.2;
 - (d) if a Catastrophic Failure has occurred;
 - (e) if any representation, warranty, undertaking or statement made by the Service Provider in or pursuant to the Service Provider's Tender is (or proves to have been incomplete, untrue, incorrect or misleading in any material respect;
 - (f) if there is an Insolvency Event.
- 69.2 The Service Provider acknowledges that this clause 69.2 serves only to suspend, but not to extinguish or waive the Authorities' right to terminate this

agreement on the grounds of Consistent Failure by granting the Service Provider a grace period to cure the Consistent Failure. If the Authorised Officer notifies the Service Provider that Consistent Failure has occurred, then within 10 Working Days of such notice, the Service Provider shall submit to the Authorised Officer a recovery plan for approval (such approval not to be unreasonably withheld or delayed). The recovery plan shall set out the steps and the date (which shall not exceed 90 calendar days from the date of the notice) by which the Service Provider shall remedy Consistent Failure (**Consistent Failure Rectification Period**). If the Consistent Failure has not been remedied as at the end of the Consistent Failure Rectification Period, the Authorities shall have the right to terminate this agreement with immediate effect. If the Consistent Failure is remedied as at the end of the Consistent Failure Rectification Period, then the Authorities' then right to terminate this agreement on the grounds of that incident of Consistent Failure shall no longer apply.

- 69.3 The Authorities may terminate this agreement in accordance with the provisions of clause 72 and clause 73.
- 69.4 If this agreement is terminated by the Authorities for cause such termination shall be at no loss or cost to the Authorities and the Service Provider hereby indemnifies the Authorities against any such losses or costs which the Authorities may suffer as a result of any such termination for cause.
- 69.5 The Service Provider may terminate this agreement if the Authorities fail to make payment of an undisputed amount (**Late Payment**), where the following conditions are met:
- (a) such amount exceeds the Late Payment Threshold Amount (being an amount equal to at least 80% of the core Charges payable each month in the current Contract Year);
 - (b) such amount is set out in a valid and properly addressed invoice submitted to the Authorities or to the Authorities' Related Party by the Service Provider;
 - (c) such amount is overdue by more than 90 Working Days;
 - (d) such overdue payment is not the result of any information technology or systemic issues with the banking or payments system affecting either the Authorities, the Authorities' Related Party, their funder or the Service Provider.
- 69.6 If the Service Provider wishes to terminate this agreement for Late Payment, the Service Provider must serve a notice on the Authorities in accordance with the provisions of clause 84, with full particulars within 30 Working Days of the Late Payment. If the Late Payment has not been remedied within 40 Working Days of the notice, this agreement shall, unless otherwise agreed, terminate.

In the Late Payment is remedied within the 40 Working Day period, the Service Provider's notice is deemed to have been withdrawn.

70. TERMINATION ON NOTICE

70.1 Without affecting any other right or remedy available to it, the Authorities may terminate this agreement at any time by giving at least 18 months' written notice to the Service Provider.

70.2 If this agreement terminates pursuant to clause 70.1, the Service Provider shall be entitled to receive the termination payment applicable as at the Termination Date, which shall be the sum of (a) the Breakage Costs specified in the table below applicable as at the Termination Date and (b) the Direct Costs notified to the Authorities in accordance with this clause 70:

commercially sensitive information



Where

Year 0-2 shall be the period commencing on and including the Effective Date to and excluding the second anniversary of the Elmbridge Commencement Date, and **Year 2-3** and so forth shall be construed accordingly;

Breakage Costs are set out in the table above and have been determined by the Service Provider as equalling an amount comprising the sum of: Unamortised Capital Expenditure, Unamortised Bid Costs, Unamortised Mobilisation Costs and Loss of Profit as defined in this clause;

Direct Costs: those direct and committed costs incurred by the Service Provider, as at the applicable Termination Date, despite the length of the notice given to the Service Provider and the Service Provider's duty to mitigate such costs, in relation to:

- (a) materials or goods that have been ordered and cannot be cancelled and which have not transferred to the Authorities as at the Termination Date and which are not otherwise capable of redeployment by the Service Provider;

- (b) services which have been contracted by the Service Provider and which cannot be cancelled, transferred to the Authorities or to another third party, redirected or otherwise avoided by the Service Provider as at the Termination Date;
- (c) statutory redundancy costs incurred by the Service Provider in relation to any Service Provider Personnel where such Service Provider Personnel are not capable of redeployment by the Service Provider or where such Service Provider Personnel are not eligible to, or do not transfer (by TUPE or by agreement) to the Authorities or the Authorities' Replacement Contractor as at the Termination Date,

and the Service Provider shall notify the Authorities of the amount of the Direct Costs no later than 10 Working Days of service of the notice of termination by the Authorities.

Loss of Profit: an amount, as at the applicable Termination Date, equal to the Service Provider's Anticipated Profit Margin multiplied by the Annual Contract Value for that Contract Year for the period commencing on the Termination Date and ending on the second anniversary of the Termination Date as set out in the Service Provider's Contract Inception Report save that where the remaining Term as at the Termination Date is less than two years, it shall be for the period of the otherwise remaining Term

Unamortised Capital Expenditure: those unamortised costs, as set out in the Service Provider's Contract Inception Report, applicable as at the Termination Date in respect of Assets on the Asset Register (excluding Authorities' Financed Vehicles) which would be treated as capital costs in accordance with UK GAAP from which the market value of such Assets shall first be deducted.

Unamortised Bid Costs: those unamortised costs set out in the Service Provider's Contract Inception Report applicable as at the Termination Date relating to the reasonable and proper costs incurred by the Service Provider in participating in the Authorities' procurement of this agreement from and including the date of the Contract Notice being publically available to and excluding the date it is notified of the acceptance of its Service Provider Tender.

Unamortised Mobilisation Costs: those unamortised costs set out in the Service Provider's Contract Inception Report applicable as at the Termination Date relating to the reasonable and proper costs incurred by the Service Provider from and including the date it is notified of the acceptance of its Service Provider Tender in relation to the mobilisation of the Services in respect of each of the Authorities.

- 70.3 The Authorities reserve the right, under this clause 70, to terminate this agreement if any of the grounds listed in Regulation 73(1) (a) and (c) of the Public Contracts Regulations 2015 apply and in such circumstances the notice period as set out in clause 70.1 will not apply.

71. CHANGE OF CONTROL

- 71.1 The Service Provider shall not, without the prior written consent of the Authorities (not to be unreasonably withheld or delayed), whether by a single transaction or by a series of transactions whether related or not, sell, transfer, lend or otherwise dispose of the whole or any part of its business or assets where the effect of such transaction(s) would be to materially affect the ability of the Service Provider to perform its obligations under this agreement.

72. FORCE MAJEURE

- 72.1 Subject to the remaining provisions of this clause 72, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure event.

- 72.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

- 72.3 A party cannot claim relief if the Force Majeure event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure event, including but not limited to the failure to have or implement a properly constituted Service Continuity Plan.

- 72.4 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms and a recovery plan to mitigate the effects of the Force Majeure event and to facilitate the continued performance of this agreement. Where the Service Provider is the affected party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure event in accordance with Good Industry Practice.

- 72.5 The affected party shall notify the other party as soon as practicable after the Force Majeure event ceases or no longer causes the affected party to be

unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure event unless agreed otherwise by the parties.

- 72.6 Either party may, during the continuance of any Force Majeure event, terminate this agreement by written notice to the other party if a Force Majeure event occurs that affects all or a substantial part of the Services and which continues for more than 60 Working Days and the provisions of clause 74 (Exit Management) shall apply.

73. PREVENTION OF BRIBERY

- 73.1 The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider's Personnel, have at any time prior to the Effective Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 73.2 The Service Provider shall not during the term of this agreement:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authorities, or any one of them, or any employees, consultants, contractors, sub-contractors or agents of the Authorities, or any one of them, to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

- 73.3 The Service Provider shall during the term of this agreement:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause 73.3(a) and make such records available to the Authorities on request.

73.4 The Service Provider shall immediately notify the Authorities in writing if it becomes aware of any breach of clause 73.1 and/or clause 73.2, or has reason to believe that it has or any of the Service Provider's Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

73.5 If the Service Provider makes a notification to the Authorities pursuant to clause 73.4, the Service Provider shall respond promptly to the Authorities' enquiries, co-operate with any investigation, and allow the Authorities to audit any books, records and/or any other relevant documentation in accordance with clause 66 (Audit).

73.6 If the Service Provider is in default under clause 73.1 and/or clause 73.2, the Authorities may by notice:

- (a) require the Service Provider to remove from performance of this agreement any Service Provider's Personnel whose acts or omissions have caused the default; or
- (b) immediately terminate this agreement.

73.7 Any notice served by the Authorities under clause 73.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authorities believe has committed the Prohibited Act and the action that the Authorities have elected to take (including, where relevant, the date on which this agreement shall terminate).

74. EXIT MANAGEMENT

74.1 On the date falling six months prior to the expiry of the Term or if this agreement is terminated in whole or in part for any reason, as soon as notice of termination is served by the Authorities the provisions of the Exit Management Plan shall come into effect and the Service Provider shall co-operate fully with the Authorities and where applicable, any Replacement Service Provider, to ensure an orderly migration of the Services to the Authorities or any one of them, or, at the Authorities' request, one or more

Replacement Service Provider(s). Such co-operation by the Service Provider shall include, but shall not be limited to:

- (a) liaising with the Authorities, or any one of them and/or any Replacement Service Provider(s), and providing reasonable assistance and advice concerning the Services and their transfer to the Authorities, or any one of them, and/or to such Replacement Service Provider(s);
- (b) procuring all relevant consents, approvals and/or terms and conditions (including agreements to assign, novate or extend arrangements) under or in any third party contracts or leases that are necessary to ensure the continued provision and/or receipt of the Services;
- (c) providing to the Authorities, or any one of them, and/or to any Replacement Service Providers all and any information concerning the Services which is required for the efficient transfer of responsibility for their performance; and
- (d) not taking any action at any time during the Term or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult or increase the cost of the transfer of the Services to the Authorities, or any one of them and/or one or more Replacement Service Providers.

74.2 The Exit Management Plan shall be produced by the Service Provider, based upon the principles set out in Schedule 13 and the Service Provider's Tender, updated and augmented duly to:

- (a) correlate to any change in the Services arising between the date of submission of the Service Provider's Tender and the applicable Service Commencement Date; and
- (b) reflect the Service Provider's due diligence and knowledge acquired as a result of the mobilisation process for each Authority.

74.3 The Service Provider shall supply the Exit Management Plan to the Authorities within three months of the Elmbridge Commencement Date. The Authorities shall provide the Service Provider with their comments on the plan within 20 Working Days of receipt. The Service Provider shall incorporate the Authorities' comments and suggestions and shall issue a revised copy of the plan to the Authorities within 10 Working Days of receipt of the Authorities' comments.

74.4 The Exit Management Plan prepared in accordance with clause 74.2 shall set out:

- (a) the activities required to enable the Authorities, or any one of them, to re-tender the provision of the Services;
- (b) the activities necessary to support any Replacement Service Provider in carrying out any necessary due diligence;
- (c) details of the transition services to be provided by the Service Provider prior to the expiry of the Initial Term or any Extension Period, as the case may be;
- (d) support for the Authorities, or any one of them, and/or any Replacement Service Provider during its preparation of any relevant plan for the transition of the Services to the Authorities, or any one of them, and/or any Replacement Service Provider including prior to and during the transition period;
- (e) the maintenance of a "business as usual" environment for the Authorities, or any one of them, during all such transition activities for such transition period; and
- (f) all other necessary activities to support the preparation for, and execution of, a smooth and orderly transition and transfer to the Authorities, or any one of them and/or any Replacement Service Providers.

74.5 The parties shall review, and the Service Provider shall update, the Exit Management Plan within three months of each subsequent Service Commencement Date in accordance with clause 74.2 and thereafter every 12 months during the Term so as to ensure that it corresponds to developments and/or changes in the Services.

74.6 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authorities before such completion) the Service Provider shall procure that all data and other material belonging to the Authorities (and all media of any nature containing information and data belonging to the Authorities or relating to the Services), shall be delivered to the Authorities forthwith and the Service Provider's Representative shall certify full compliance with this clause.

74.7 The provisions of clause 12.3 (provision of records), clause 57 (Indemnities), clause 59 (Insurance), clause 61 (Freedom of Information), clause 62 (Data Protection), clause 66 (Audit), clause 69 (Termination for Breach) and this clause 74 (Exit Management) shall survive termination or expiry of this agreement.

GENERAL PROVISIONS

75. EVIDENCE IN CONNECTION WITH LEGAL PROCEEDINGS

75.1 On request by the Authorised Officer, the Service Provider shall provide to the Authorised Officer or his professional advisers information and assistance in connection with any potential or actual legal proceedings in which the Authorities may have an interest or may become involved or may any disciplinary hearing internal to the Authorities, or any one of them, and shall give evidence in such proceedings or hearings arising out of or in connection with the provision of the Services.

75.2 Any such information or assistance shall be provided without charge to the Authorities.

76. NON-SOLICITATION

Neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

77. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

78. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

79. SEVERABILITY

79.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any

modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

- 79.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

80. PARTNERSHIP OR AGENCY

- 80.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Authorities and the Service Provider, constitute the Service Provider the agent of the Authorities, or authorise the Service Provider to make or enter into any commitments for or on behalf of the Authorities.

- 80.2 Each of the Authorities and the Service Provider confirm it is acting on its own behalf and not for the benefit of any other person.

81. NON-FETTER

All rights and duties which each of the Authorities has as a local authority or which the any of the Authorities' officers have as local authority officers are expressly reserved and the consent of the Authorities given pursuant to this agreement shall be without prejudice to any determination which any one of the Authorities may be required to make in its capacity as a local authority.

82. THIRD PARTY RIGHTS

- 82.1 Except as (a) expressly provided in Schedule 14 (TUPE) which is enforceable by a Replacement Contractor, (b) as expressly provided in this agreement which is enforceable by any Authorities' Related Party and (c) with the exception of any Partner Organisations to whom the Authorities may require the provision by the Service Provider of any of the Services under the terms of this agreement including clause 4.10 which shall be enforceable by a Partner Organisation, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

- 82.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any Replacement Contractor or any other person.

83. PUBLICITY

The Service Provider shall not, and shall procure that its employees (and directors):

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use one or more of the Authorities' names or logos in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written approval of the Authorities, which shall not be unreasonably withheld or delayed or otherwise in accordance with the agreed Press Protocol set out in Schedule 21.

84. NOTICES

84.1 Any notice to be given to or by all or any of the Authorities or to or by any Partner Organisation under this agreement shall be deemed to have been properly given if it is given to or by the Authorities' Authorised Officer.

84.2 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service and shall:

- (a) In the case of the Authorities or a Partner Organisation, be delivered to the Authorities' Authorised Officer at Surrey Heath Borough Council, Surrey Heath House, Knoll Road, Camberley, Surrey, GU15 3HD;
- (b) In the case of the Service Provider, be delivered to the Service Provider's Representative at the address stated for it on page 1 of this agreement,

or such other address as may be notified by either party to the other party in accordance with this clause 84.

84.3 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the earlier of the second Working Day after posting or at the time recorded by the delivery service.

84.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other

method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

85. ENTIRE AGREEMENT

- 85.1 This agreement, the schedules and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

86. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

87. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

88. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been executed as a deed and delivered on the date stated at the beginning of it.

Schedule 1 Specification

SERVICES SPECIFICATION

CONTENTS

GENERAL PROVISIONS.....	4
1 INTRODUCTION AND SCOPE.....	4
2 WASTE COLLECTION SERVICE	4
3 CLEANING SERVICE	5
4 OTHER SERVICES.....	5
GENERAL SERVICE SPECIFICATION	6
5 OUTLINE.....	6
6 STRATEGIC SERVICES OBJECTIVES AND SERVICES MANAGEMENT.....	6
7 INFORMATION TECHNOLOGY SYSTEM.....	6
8 PERFORMANCE AND MONITORING	8
9 SERVICE USERS' SATISFACTION AND COMPLAINTS	8
10 SERVICE USERS' CONTACT MANAGEMENT AND GARDEN WASTE ADMINISTRATION	10
11 QUALITY AND ENVIRONMENTAL MANAGEMENT.....	14
12 HEALTH AND SAFETY	14
13 EMERGENCY WORK	15
14 SERVICE CONTINUITY	15
15 MOBILISATION AND HANDBACK	16
16 RESOURCES.....	16
17 DEPOTS AND FACILITIES MANAGEMENT	17
18 DELIVERY SITES	17
19 ASSET MANAGEMENT	24
20 CONTAINERS MANAGEMENT	25

OPERATIONAL REQUIREMENTS: WASTE COLLECTION SERVICE	27
21 WASTE COLLECTION SERVICE FROM HOUSEHOLDS	27
22 RESIDUAL WASTE COLLECTIONS FROM HOUSEHOLDS IN STREET LEVEL PROPERTIES	27
23 DRY RECYCLING COLLECTIONS FOR HOUSEHOLDS IN STREET LEVEL PROPERTIES	28
24 FOOD WASTE COLLECTIONS FROM HOUSEHOLDS IN STREET LEVEL PROPERTIES	29
25 GARDEN WASTE COLLECTIONS FROM HOUSEHOLDS IN STREET LEVEL PROPERTIES	29
26 RESIDUAL WASTE COLLECTIONS FROM HOUSEHOLDS IN COMMUNAL BIN PROPERTIES.....	30
27 DRY RECYCLING COLLECTIONS FROM HOUSEHOLDS IN COMMUNAL BIN PROPERTIES	31
28 FOOD WASTE COLLECTIONS FROM HOUSEHOLDS IN COMMUNAL BIN PROPERTIES	31
29 GARDEN WASTE COLLECTIONS FROM HOUSEHOLDS IN COMMUNAL BIN PROPERTIES	32
30 BRING SITES RECYCLING COLLECTIONS.....	33
31 COLLECTION DAYS	33
32 ADDITIONAL INSTRUCTED COLLECTION.....	34
33 COLLECTION POINTS AND AGREED COLLECTION POINTS.....	34
34 ACCESS ISSUES	35
35 LITTER AND SPILLAGES	35
36 OPERATIONAL HOURS	36
37 COLLECTION SERVICE HOLIDAYS	36
38 DELIVERY OF COMMUNICATIONS	36

39	CONTRARY MATERIALS.....	36
40	NEW DEVELOPMENTS	37
41	ASSISTED COLLECTIONS.....	37
42	OTHER NON-DOMESTIC SOURCES	37
43	COMMERCIAL WASTE COLLECTION SERVICE - PROVISIONAL.....	38
44	COLLECTION OF OTHER MATERIALS.....	38
45	CLINICAL WASTE COLLECTION SERVICE	39
46	BULKY WASTE COLLECTION SERVICE	40
	OPERATIONAL REQUIREMENTS: STREET CLEANING SERVICE	41
47	INTRODUCTION	41
48	GENERAL CLEANING REQUIREMENTS	41
49	CLEARANCE OF LEAF/BLOSSOM	43
50	ENHANCED CLEANING	44
51	REMOVAL OF DEAD ANIMALS	44
52	PAVEMENT WASHING AND PEDESTRIAN SUBWAYS.....	44
53	EVENTS CLEANING	44
54	INSTALLATION, EMPTYING, CLEANING AND REMOVAL OF STREET LITTER BINS, BRING SITE CONTAINERS AND DOG WASTE BINS	44
55	CLEARANCE OF FLY TIPPED WASTE	45
56	CLEANING OF PRECINCTS AND SURFACE CAR PARKS	46
57	REMOVAL OF GRAFFITI AND FLY POSTING	46
58	CLEANING OF ITEMS OF STREET FURNITURE AND SIGNAGE	47
59	REMOVAL AND MANAGEMENT OF HIGHWAY WEEDS (PROVISIONAL)	47

GENERAL PROVISIONS

1 INTRODUCTION AND SCOPE

- 1.1 This Specification covers the Services within the Authorities' Area as outlined in paragraphs 2 - 4.

2 WASTE COLLECTION SERVICE

- 2.1 The waste collection service includes the following services:

- (a) Collection of Residual Waste from households (**Residual Waste Collection Service**);
- (b) Collection of Dry Recycling from households (**Dry Recycling Collection Service**);
- (c) Collection of Food Waste from households (**Food Waste Collection Service**);
- (d) Collection of Garden Waste from households (**Garden Waste Collection Service**);
- (e) Collection of Other Recycling Materials, such as batteries, waste electrical and electronic equipment (**WEEE**) and textiles from households (**Other Recycling Materials Collection Service**);
- (f) Collection of Dry Recycling from Bring Sites;
- (g) Collection of Residual Waste, Dry Recycling, Food Waste and Garden Waste from Other Non-Domestic Sources;
- (h) Nappies and absorbent hygiene products (**AHP**) (**Nappies and AHP Collection Service**) (**provisional service**);
- (i) Collection of Clinical Waste (**Clinical Waste Collection Service**);
- (j) Collection of Bulky Waste (**Bulky Waste Collection Service**);
- (k) Commercial Waste Collection Service (**provisional service**);
- (l) Provision, delivery, exchange and removal of Containers and Sacks;
- (m) Repair, cleaning and refurbishment of Containers prior to returning to service;
- (n) Out of hours response service;
- (o) Emergency assistance; and
- (p) Delivery of communications materials to Service Users, (together the **Waste Collection Service**).

3 CLEANING SERVICE

3.1 The Service Provider is not required to perform the cleaning service across the whole of the Authorities' Area. The cleaning service does not apply to the Authority Area of Woking Borough Council.

3.2 The cleaning service includes the following services:

- (a) Cleaning of all public highways and specified land for which the Authorities are responsible;
 - (b) Clearance of leaf/blossom;
 - (c) Enhanced cleaning;
 - (d) Removal of dead animals;
 - (e) Pavement washing and pedestrian subways;
 - (f) Events cleaning;
 - (g) Installation, emptying, cleaning and removal of street litter bins, bring site containers and dog waste bins;
 - (h) Clearance of fly-tipped waste;
 - (i) Cleaning of precincts and surface car parks;
 - (j) Removal of graffiti and flyposting;
 - (k) Cleaning of items of street furniture and signage;
 - (l) Removal and management of highway weeds (provisional service);
 - (m) Out of hours response service; and
 - (n) Emergency assistance
- (together the **Cleaning Service**)

4 OTHER SERVICES

4.1 The Service Provider shall provide the following services:

- (a) Procurement of Containers; and
- (b) Service Users' Contact Management Service and Garden Waste Administration Scheme in the Authority Areas of Woking Borough Council and Surrey Heath Borough Council.

4.2 The Specification is common to all Authorities. There are however Services that are not required to be performed across the whole of the Authorities' Area and which are required in one or several Authority Areas only. Services which have been marked as 'N' in Schedule 2 to the agreement (Pricing Schedule) mean 'Not Required' in this context. Services which have been marked as 'P' in the Pricing Schedule mean 'Provisional' in this context.

GENERAL SERVICE SPECIFICATION

5 OUTLINE

- 5.1 The requirements set out in paragraphs 6 to 20 (**General Service Specification**) are applicable to all the Services and shall apply throughout the Term.

6 STRATEGIC SERVICES OBJECTIVES AND SERVICES MANAGEMENT

- 6.1 **Output 1 (Partnering): The principles and objectives of Schedule 9 (Contract Management) are applied in a spirit of openness, mutual trust and cooperation.**
- 6.2 The Authorities require a high standard of service delivery that utilises innovation and best practice.
- 6.3 The Service Provider and the Authorities shall work together to deliver Services that are planned for success and achieve the following key requirements:
- (a) value to the council tax payer;
 - (b) high levels of customer satisfaction;
 - (c) the objectives, targets and actions of the Surrey Waste Partnership's Joint Municipal Waste Strategy;
 - (d) appropriate levels of shared risk and reward;
 - (e) continuous service improvement;
 - (f) on-going efficiency savings;
 - (g) reduction of the carbon footprint and the environmental impacts of the Services;
 - (h) integration of the Services across the Authorities' Area and with other service providers to the Authorities in the Authorities' Area;
 - (i) innovation; and
 - (j) flexibility to adapt to changing legislation and policy.

- 6.4 The Service Provider shall develop and maintain the Service Delivery Plan to set out how the Services shall be provided and perform the Services in accordance with the Service Delivery Plan.

7 INFORMATION TECHNOLOGY SYSTEM

- 7.1 **Output 2 (Information Technology System): The Information Technology System records and reports all data and information relating to the delivery of the Services and is implemented and fully operational from the first Service Commencement Date.**
- 7.2 The Service Provider shall:

- 7.2.1 design, develop and provide an Information Technology System that delivers operational management, monitoring and reporting on the performance of the Services across the Authorities' Area;
- 7.2.2 provide an Information Technology System that:
- (a) is acceptable to the Authorities;
 - (b) meets an agreed open information exchange design;
 - (c) is able to exchange information with all Authorities using a common standard method of description agreed between the Service Provider and the Authorities (a **common data schema or interface definition**);
 - (d) is accessible to the Authorised Officer and all other authorised users of the Authorities;
 - (e) supports 24 hour online reporting; and
 - (f) provides an online booking system to manage clinical waste and bulky waste collections including taking payments from Service Users.
- 7.3 The Information Technology System shall:
- 7.3.1 measure and record data accurately and transparently for the day to day management of the contract between the Service Provider and the Authorities (**Contract**) and to report against agreed Key Performance Indicators as approved by the Authorised Officer;
 - 7.3.2 measure and record data accurately and transparently for cost information of the Contract and for the generation of accurate invoices as approved by the Authorised Officer;
 - 7.3.3 receive and record customer enquiries, service requests, complaints and issues directly from Service Users in an agreed format;
 - 7.3.4 provide a unique reference number for enquiry tracking;
 - 7.3.5 check eligibility for a Service and review the applicable policy for that Service User's property against the UPRN data set or for the street (namely, Priority Zone classification) against USRN data set;
 - 7.3.6 follow agreed protocols for that enquiry;
 - 7.3.7 provide instructions to operational staff to resolve the enquiry;
 - 7.3.8 record and track progress and time taken to resolve the issues;
 - 7.3.9 provide updates and notifications as agreed with the Authorised Officer to the Service User via email or text or letters (according to that Service User preference);
 - 7.3.10 measure time taken to resolve issues for inclusion in performance management reporting;

- 7.3.11 provide Performance Management Reports required for the performance monitoring of the Contract in accordance with the Contract or as required by the Authorised Officer; and
- 7.3.12 provide other management reports as required by the Authorised Officer on behalf of the Authorities or individual Authorities in the Authorities' Area as may be reasonable.
- 7.4 provide and maintain an Information Technology System that:
 - 7.4.1 takes full advantage of developments in new technology, the development of new interfaces and software upgrades and regular enhancements during the Term;
 - 7.4.2 meets the legislative and Authorities' good practice requirements in relation to information and data protection, security, integrity and audit.
- 7.5 have in place and implement arrangements in relation to data maintenance, backup and recovery procedures, system availability and downtime and disaster recovery.

8 PERFORMANCE AND MONITORING

- 8.1 **Output 3 (Performance):** Appropriate mechanisms for measuring and reporting performance for all Services are applied, including the production of regular Performance Management Reports and other Service Reports.
- 8.2 **Output 4 (Monitoring):** The monitoring of the Contract produces quality data to reflect actual performance of the Services, to identify unsatisfactory performance and to resolve issues in a timely manner.
- 8.3 The Service Provider shall:
 - 8.3.1 design, to the approval of the Authorised Officer, and subsequently provide and manage the Performance Management Reports and Service Reports;
 - 8.3.2 be responsible for monitoring its own performance against the requirements of the Contract and design, monitor and report to the Authorised Officer on its performance of the Services in the Performance Management Reports;
 - 8.3.3 notify the Authorised Officer of any failure to perform the Services in accordance with the Specification (including but not limited to a failure to meet a Key Performance Indicator) and rectify such service failures in accordance with the Specification; and
 - 8.3.4 develop, to the approval of the Authorised Officer, and subsequently provide an Annual Service Report and an Annual Service Improvement Plan which shall address the delivery of on-going continuous improvement and value for money.

9 SERVICE USERS' SATISFACTION AND COMPLAINTS

- 9.1 **Output 5 (Service Users' Satisfaction):** The Services are operated in a manner that maintains and improves Service Users' satisfaction.

- 9.2 **Output 6 (Service Users' Enquiries and Complaints): The Service Provider promptly supports the Authorities when dealing with enquiries, service reports and complaints, including rectifiable and non-rectifiable complaints.**
- 9.3 The Service Provider shall:
- 9.3.1 design and deliver the Services to maintain high levels of Service Users' satisfaction year on year;
 - 9.3.2 provide good customer service and facilitate the Authorities in providing good customer service to their customers;
 - 9.3.3 ensure that all enquiries and complaints are allocated to a relevant member of staff; and
 - 9.3.4 report to the Authorised Officer the comments, enquiries and complaints from Service Users made directly to the Service Provider's Personnel.
- 9.4 The majority of service enquiries and service failures can be reported by the Service User or Authorised Officer using a web based system directly to the Service Provider and resolved by the Service Provider without the direct involvement of the Authorities. For these service requests and failures, the Service Provider will:
- 9.4.1 receive a set of standard service requests and failures submitted directly from Service Users through a web based system with agreed scripting agreed with the Authorised Officer. Examples include (not exhaustive) 'missed bin', 'bin damaged', 'deliver additional bin';
 - 9.4.2 acknowledge all web based enquiries automatically (within 1 hour);
 - 9.4.3 resolve and respond to all service requests and failures in accordance with rectification periods and KPI targets;
 - 9.4.4 respond directly to the Service User in accordance with standard operating waste policies through the web based system with standard scripting agreed with the Authorised Officer. Examples include (not exhaustive) 'bin not presented', 'bin contaminated'; and
 - 9.4.5 ensure all interactions with the Service User are recorded in the ITS and provide a weekly schedule of the number of each interaction received and the nature of the resolution and response.
- 9.5 Where Service Users contact the Authorities to report non-standard service requests or failures the Authorities will communicate directly with the Service User. For these non-standard service requests and failures, the Service Provider will:
- 9.5.1 receive rectification notices relating to the service requests and failures from the Authorities in an electronic format; and
 - 9.5.2 investigate, resolve and respond to the Authorities regarding all service requests and, failures within a maximum of 3 Working Days.
- 9.6 Formal complaints are considered to be more than service failures and may be a result of the Service Provider failing to resolve previous service failures at a particular

property or location. Formal complaints from the Service User relating to the services provided by the Service Provider should be submitted to the Authorities by the Service User. Complaints will be investigated and handled by the Authorities in line with their complaints policy. The Service Provider will:

- 9.6.1 respond to requests for information by the Authorities by adhering to the complaint procedures and target timescales of the Authorities for dealing with complaints; and at least, respond fully to the Authorities request within a maximum of 3 Working Days.
- 9.7 Where the Service User is making a claim for damages against the Service Provider, the Service User and the Service Provider will communicate directly to resolve the matter. The Service Provider will:
 - 9.7.1 acknowledge the Service User's initial claim within a maximum of 3 Working Days outlining the process for making and handling a claim;
 - 9.7.2 respond in full to the claim within 20 Working Days;
 - 9.7.3 where a resolution takes longer than 20 Working Days, update the Service User every 5 Working Days or agree an alternative timeframe with the Service User and Authorised Officer; and
 - 9.7.4 provide the Authorised Officer with a weekly schedule of the current progress of all outstanding claims and the outcome of any claims resolved in that period.
- 9.8 An illustration of the Service User journey for telephone / digital contact is shown at Annex 1. The Service Provider solution should be compatible with or improve upon these processes.

10 SERVICE USERS' CONTACT MANAGEMENT AND GARDEN WASTE ADMINISTRATION

- 10.1 **Output 7 (Contact Management Service) The Service Provider deals with enquiries, service reports and complaints, including rectifiable and non-rectifiable complaints submitted to it from Service Users.**
- 10.2 The Service Provider is not required to perform this service across the whole of the Authorities' Area and the Service Users' Contact Management Service applies, if purchased, to the Authority Areas of Woking Borough Council (Waste Services) and Surrey Heath Borough Council (Waste Services and Street Cleaning Services).
- 10.3 Where the Service Provider provides the Service Users' Contact Management and Garden Waste Administration the Authorities require the Information Technology System to be fully operational from the Woking Borough Council's Service Commencement Date.
- 10.4 In addition to paragraph 9 of this Specification, the Service Provider shall provide a contact centre operation between the hours of 8:30am and 5pm, Monday to Friday, and staff with the necessary skills, aptitude and equipment from the Service Provider's approved location.

- 10.5 The Service Provider will have a direct customer relationship with the Authorities' residents. The Service Provider shall provide an Information Technology System which allows all relevant payments to be processed, all service requests, failures, complaints and comments relating to the services to be recorded, acknowledged, responded to and followed up as appropriate by the Service Provider, to the satisfaction and expectation of the Authorised Officer and Service Users. Whichever method chosen by the Service Users to communicate their service requests, failures, complaints and comments, the Service Provider will be responsible for ensuring they are properly recorded within its Information Technology System, to provide a complete and total record of all activities. An illustration of the Service User Journey for telephone / digital contact is shown at Annex 2. The Service Provider solution should be compatible with or improve upon these processes.
- 10.6 The Service Provider will be required to forward non-waste issues or non-contractual areas that are reported to the centre e.g. reports of vandalism to the appropriate contact.
- 10.7 The Service Provider shall use its Information Technology System to:
- 10.7.1 manage the dataset (e.g. property level and collection information, such as: round, tonnages, contamination, liquidated damages etc.) and ensure that performance trends are analysed to indicate where improvements in the services can be achieved;
 - 10.7.2 support self service and allow the Authorities to see details of the Service Users experience and activate the reporting mechanism;
 - 10.7.3 generate itemised rectification/default notices and link notices and responses with Service Users and property records; and
 - 10.7.4 be capable of providing reports for performance monitoring purposes. The Authorised Officer will determine the type and number of reports required based on the performance indicators.
- 10.8 The Service Provider shall operate the service in accordance with the following performance standards;
- 10.8.1 answer 90% of calls within 20 seconds (four rings);
 - 10.8.2 acknowledge all email or web based enquiries automatically (within 1 hour);
 - 10.8.3 acknowledge all social media enquiries within 3 hours during the Working Day;
 - 10.8.4 answer all letters, fully addressing all points raised, within 7 Working Days;
 - 10.8.5 remedy 90% of complaints to the Service User's satisfaction, in accordance with waste policies, within a maximum of 3 Working Days of receipt;
 - 10.8.6 for those complaints not remedied to the Service User's satisfaction within 3 Working Days, the Service Provider shall update each Service User of the progress of their enquiry every 2 Working Days and remedy to the Service User's satisfaction, in accordance with the waste policies, within a maximum of 10 Working Days from acknowledgement;

- 10.8.7 with effect from the Contract Year commencing 1 April 2019, reduce the number of complaints received year on year by 1% on the previous year; and
- 10.8.8 ensure that no more than 1% of complaints escalate to the second stage.
- 10.9 The Service Provider is required to resolve 90% of complaints within 3 Working Days. The 90% target is sufficient to ensure a consistently high standard of service for the majority of service enquiries, complaints whilst providing the flexibility to deal with the small number of complaints that require a longer timeframe to resolve e.g. insurance claims.
- 10.10 In addition to the performance indicators the Service Provider shall:
 - 10.10.1 advise the Service User of the outcome of their complaint and ask the Service User as to whether they are happy with this outcome. Where the Service User is satisfied the complaint is closed, where the Service User is not satisfied the escalation process is explained. Where the Service Provider believes the complaint has been resolved and where the Service User remains unsatisfied the complaint may be subject to an escalation process and presented to the Authorised Officer. In these cases the Authorised Officer will agree the Service Provider's course of action or agree any further actions where appropriate. Where the complaint is agreed as closed the Authorised Officer will sign the final correspondence to the Service User. Where further actions are required the Service Provider will own and remedy;
 - 10.10.2 embrace the highest standards, strive for excellence and put the Service User as the focus of what the Service Provider does;
 - 10.10.3 welcome comments and complaints about services and remedy all problems to the Service User's satisfaction wherever possible, according to the waste policies;
 - 10.10.4 overcome language barriers;
 - 10.10.5 undertake on site meetings with Service Users as required/requested to resolve issues;
 - 10.10.6 deal with abusive calls/Service Users;
 - 10.10.7 provide a weekly schedule of all complaints received detailing the Service Users' information, the cause of the complaint, the action taken and final outcome/resolution;
 - 10.10.8 promote self service options as the preferred method of service; and
 - 10.10.9 ensure correspondence meets the Authorities' corporate standards.
- 10.11 **Output 8 (Garden Waste Administration Service): The Garden Waste Administration Service deals effectively with the Authorities' customer care and administration requirements.**
- 10.12 The Service Provider shall provide a Garden Waste Administration Service. The Service Provider is not required to perform this service across the whole of the Authorities'

Area and this service applies, if purchased, to the Authority Areas of Woking Borough Council and Surrey Heath Borough Council.

10.13 The Service Provider shall:

10.13.1 provide a Garden Waste management system and staff with the necessary skills, aptitude and equipment from the Service Provider's approved location; and

10.13.2 provide and implement an Information Technology System to administer the garden waste collection service to deal with all enquiries (migrate all existing Service Users, new customers, renewals, change of order, cancellations, delivery, payments) and complaints handling. The Information Technology System shall include upfront monthly and annual direct debits, allowing Service Users to set up direct debits online, over the telephone and on paper.

10.14 The Service Provider shall ensure that:

10.14.1 it and its direct debits module comply with published direct debit guidelines and rules for paperless direct debits and the PCI DSS; and

10.14.2 its information security policy aligns with industry good practice, including ISO 27001 standards.

10.15 All subscription fee income received by the Service Provider will be included in the monthly invoice and paid to the relevant Authority, two months in arrears. The Service Provider shall provide an arrears management solution capable of managing and recovering customer debts. Direct debit rejections/failures will be processed by the Service Provider in accordance with published guidelines.

10.16 The Annual Subscription Fee shall be set by the Authorities. Residents in receipt of certain benefits (means tested or universal credits) are entitled to concessionary rates. Where the Authorities hold information this will be provided to the Service Provider. Where this is not held by the Authority, the Service Provider must obtain proof from the resident.

10.17 The Service Provider will ensure; subscribers accept the schemes terms and conditions, receive payment (subscribers subscription fees are received prior to the commencement of collections), organise delivery of service information and Container(s), subscribers are notified of their renewal date 20 Working Days prior to it being due, subscribers are notified that their subscription will be cancelled 10 Working Days post their due date, process the cancellation a further 10 Working Days from the notice to cancel, retrieve the Container(s) within the container management timescales. Residents can join the service at any time of the year and their subscription year commences from the date their receptacles are delivered.

10.18 Performance monitoring measures to be presented in a monthly performance report encapsulating the performance of the service including:

10.18.1 the total number of subscribers;

10.18.2 the number of new subscribers and cancellations to demonstrate the take up of the service;

- 10.18.3 number of cancellations due to poor service;
- 10.18.4 number of subscribers by payment method e.g. DD subscribers, telephone, cheque;
- 10.18.5 number of failed direct debits;
- 10.18.6 number of subscribers receiving concessionary rates; and
- 10.18.7 number of bin per subscriber e.g. how many subscriber for 1 bin, 2 bins etc.
- 10.19 The Service Provider shall develop and implement innovative solutions in regards to the Garden Waste Collection Service which benefit the Authorities.
- 10.20 The Service Provider shall provide the subscriber book (**Customer Book**) and complete up to date data to the Authorities on the Termination Date.
- 10.21 Where the service is cancelled due to the Service Provider's poor performance, the Service Provider will be responsible for retrieving the Container(s) at no additional cost to the Authorities.

11 QUALITY AND ENVIRONMENTAL MANAGEMENT

- 11.1 **Output 9 (Quality and Environmental Management): Accredited Quality and Environmental Management Systems are in place.**
- 11.2 The Service Provider shall:
 - 11.2.1 design, maintain and keep in force management systems that are certified by a UKAS certified assessment body (or a body of similar standing) as covering the scope of the Services detailed in this Specification and covering the depots and facilities used for the delivery of the Services and to the minimum following standards: ISO 9001:2008; ISO 14001:2004; and BS OHSAS 18001:2007. Certification shall be obtained within the first 12 months of each Service Commencement Date for the scope of the Services that commence, and the depots and facilities used, from that specific Service Commencement Date;
 - 11.2.2 permit the Authorised Officer and all other authorised users of the Authorities access to and inspection of all relevant records and information relating to the maintenance of the accreditation of the quality and environmental management systems; and
 - 11.2.3 include the results of the annual accreditation inspections in its Annual Service Report.

12 HEALTH AND SAFETY

- 12.1 **Output 10 (Health and Safety): The health, safety and welfare of all persons who may be affected by the operations and activities performed by the Service Provider as part of the Contract is safeguarded.**

- 12.2 The Authorities require the Service Provider to keep and maintain a plan for managing all aspects of health and safety relating to the Services, including continuous improvement of health and safety.
- 12.3 The Service Provider shall:
- 12.3.1 adopt safe working practices and have due regard to all current and future regulations, guidance, working rules and legislation set by the Health and Safety Executive (HSE) or industry good practice guidance that applies to the activities under the Contract to ensure the highest standard of safety for all Service Provider's Personnel, third parties and the public;
- 12.3.2 report and act on any contraventions, incidents or accidents to the Authorised Officer as soon as practicable. The Authorised Officer shall be notified by the Service Provider as soon as practicable of any RIDDOR accidents/incidents that are reported to the HSE; and
- 12.3.3 permit the Authorised Officer and all other authorised users of the Authorities access to and inspection of all relevant records and information relating to health and safety.

13 EMERGENCY WORK

- 13.1 **Output 11 (Emergencies): Emergencies are dealt with promptly, effectively and efficiently.**
- 13.2 The Service Provider shall have in place a Service Continuity Plan for the delivery of each element of the Services which shall ensure that emergencies are dealt with promptly, effectively and efficiently.
- 13.3 The Service Provider shall provide an out of hours response service.
- 13.4 The Service Provider shall support the Emergency Plans of each of the Authorities and, as directed by the Authorised Officer, redeploy resources and/or suspend Services to support the response to emergencies (e.g. flooding, civil emergencies). The Service Provider shall offer an out of hours service at the request of the Authorised Officer. The provision of labour and vehicles to deal with unforeseen civil and local emergencies at any time will be on a Daywork Unit Rate basis.

14 SERVICE CONTINUITY

- 14.1 **Output 12 (Service Continuity): The impact of failure of the Services in whole or part is reduced, mitigated and/or negated promptly, effectively and efficiently.**
- 14.2 The Service Provider shall design, maintain and, where necessary, implement the Service Continuity Plan for the Contract for the delivery of each element of the Services, including, where relevant and as a minimum:
- 14.2.1 failures of Assets, equipment, vehicles, supplies, its supply chain or Services;
- 14.2.2 disruption to Services for any reason including exceptionally inclement weather including snow, flooding and other extreme weather;

- 14.2.3 civil emergency or unrest, energy failure, fuel shortages or industrial action; and
- 14.2.4 failure and resilience of the Information Technology System.
- 14.3 The Service Provider shall review the Service Continuity Plan regularly, and not less than annually, and in addition, particularly following the occurrence of any event that requires the Service Continuity Plan to be implemented. The Service Provider shall update it as necessary so as to ensure that it corresponds to developments and/or changes in risks and circumstances.

15 MOBILISATION AND HANDBACK

- 15.1 **Output 13 (Mobilisation):** The transition and mobilisation of the Services from the date the Authorities notify the Service Provider of the award of the Contract to each of the Service Commencement Dates until the last of the Service Commencement Dates is seamless and continuity of the Services is maintained.
- 15.2 The Service Provider shall:
 - 15.2.1 develop and implement the Service Mobilisation Plan to set out the details of the transition and mobilisation of the Services; and
 - 15.2.2 include within the Service Mobilisation Plan a mobilisation contingency plan which shall set out the arrangements to address all potential service disruptions, failures and delays, such plan to be implemented if any such disruption, failure and/or delay shall occur.
- 15.3 **Output 14 (Handback):** The Exit Management Plan shall provide for the orderly migration and seamless transition of the Services on the Termination Date.
- 15.4 The Service Provider shall develop and implement the Exit Management Plan for the approval of the Authorised Officer, which as a minimum shall include the responsibilities and the ownership of the following on the Termination Date: Assets, premises, depots and stores, the data in the Information Technology System used to manage and operate the Services, and Service Provider's Personnel information (including TUPE information).

16 RESOURCES

- 16.1 **Output 15 (Resources):** Adequate resources are available at all times to deliver the Services required by the Authorities.
- 16.2 **Output 16 (Training and Qualifications):** All of the Service Provider's Personnel are adequately trained and qualified to provide the Services required by the Authorities.
- 16.3 **Output 17 (Working Culture):** The working culture maximises the integration of the workforce employed across the Services to deliver the Services in the Contract.
- 16.4 The Service Provider shall:
 - 16.4.1 appoint competent management and supervisory employees for the efficient management of the Services and in particular:

- (a) provide a named and suitably qualified contract manager as the Service Provider's Representative. The Service Provider's Representative shall work exclusively for this Contract;
 - (b) provide sufficient number of named and suitably qualified supervisors to ensure that the Service Provider's Personnel is adequately managed and properly performs the duties to meet the Authorities' requirements; and
 - (c) have in place adequate contingency resource plans to cover for absences.
- 16.4.2 identify and employ adequate numbers of suitably trained and qualified Service Provider's Personnel for all aspects of the Services;
- 16.4.3 ensure that the Service Provider's Personnel, including those employed on a temporary or agency basis, receive appropriate and relevant induction training before commencing any operational activities;
- 16.4.4 ensure that the Service Provider's Personnel show respect and responsibility for the people within the communities that they are operating in and that they act as ambassadors of the Authorities; and
- 16.4.5 ensure that the Service Provider's Personnel reports any public realm issues to the Authorised Officer for action.

17 DEPOTS AND FACILITIES MANAGEMENT

- 17.1 **Output 18 (Depots and Facilities): Depots and facilities are provided and managed by the Service Provider to deliver the Services effectively.**
- 17.2 The Service Provider shall be responsible for providing and managing depots and facilities for the Services.
- 17.3 The Service Provider shall consider that some depots and facilities used for the delivery of the Services in the Authorities' Area may be shared with other service providers to the Authorities and that the Service Provider shall be responsible for managing its designated area having due regard to other service providers.

18 DELIVERY SITES

- 18.1 **Output 19 (Delivery Sites): All Contract Waste is delivered to the Delivery Sites specified by the Authorities.**
- 18.2 The Service Provider shall:
 - 18.2.1 deliver all Contract Waste to the Delivery Sites specified by the Authorised Officer from the Service Commencement Date(s);
 - 18.2.2 deliver directly to the Delivery Sites in the Collection Vehicles. The Service Provider shall not be permitted to bulk or tip Contract Waste at any facility other than a Delivery Site with the exception of recyclable or reusable Bulky Waste;
 - 18.2.3 design collection days/rounds, allowing for:

- (a) opening hours at Delivery Sites;
 - (b) available daily capacity at Delivery Sites, so that throughput of each type of Contract Waste is, as far as is reasonably practical, consistent;
 - (c) working with the Delivery Site operators to ensure that deliveries are, as far as is reasonably practical, co-ordinated to reduce queues and delays;
 - (d) only vehicles registered with the Authorised Officer and the Delivery Site operators shall be authorised to deliver Contract Waste to the Delivery Sites; and
- 18.2.4 comply with the Delivery Sites' rules and any operational, health and safety related requests and directions made by the Delivery Site operator whilst operating on the Delivery Sites.
- 18.3 At the Service Commencement Date(s), the Authorities' Delivery Sites, opening hours for tipping, and materials accepted at each Delivery Site shall be those listed in the following table (Table 1):

Table 1: Authorities' Delivery Sites at Service Commencement Date(s)

DELIVERY SITES	OPENING HOURS FOR TIPPING (These are the entrance gate opening times)	MATERIAL BY SITE
Charlton Lane Eco Park gasifier Charlton Lane, Shepperton, TW17 8QA	Monday to Friday 07:30 - 18:00 Saturdays 07:30 - 18:00 Sundays 08:00 - 17:00 Bank holidays 08:00 - 17:00 Closed Christmas Day, Boxing Day and New Year's Day	Residual Waste (including household residual, street cleanings, fly tipping, bulky non-reusable/recyclable and separately collected nappies/AHP)
Charlton Lane Eco Park anaerobic digester Charlton Lane, Shepperton, TW17 8QA	Monday to Friday 07:30 - 18:00 Saturdays 07:30 - 12:00 Sundays Closed Bank holidays 08:00 - 12:00 Closed Christmas Day, Boxing Day and New Year's Day	Food Waste
Charlton Lane Eco Park materials bulking facility Charlton Lane, Shepperton, TW17 8QA	Monday to Friday 07:30 - 18:00 Saturdays 07:30 - 18:00 Sundays 08:00 - 17:00 Bank holidays 08:00 - 17:00 Closed Christmas Day, Boxing Day and New Year's Day	Residual Waste (including household residual, street cleanings, fly tipping, bulky non-reusable/recyclable and separately collected nappies/AHP) Road sweepings Food Waste Garden Waste

DELIVERY SITES	OPENING HOURS FOR TIPPING	MATERIAL BY SITE
<p>Epsom waste transfer station</p> <p>Blenheim Road, Epsom, Surrey, KT19 9DL</p>	<p>Monday to Friday 08:00 - 17:00 Summer 08:00 - 16:00 Winter Saturdays 08:00 - 16:30 Summer 08:00 - 16:00 Winter Sundays 09:00 - 16:30 Summer 09:00 - 16:00 Winter Bank holidays 09:00 - 16:30 Summer 09:00 - 16:00 Winter Closed Christmas Day, Boxing Day and New Year's Day</p>	<p>Residual Waste (including household residual, street cleanings, fly tipping, bulky non-reusable/recyclable and separately collected nappies/AHP)</p> <p>Road sweepings</p> <p>Food Waste</p> <p>Garden Waste</p>
<p>Leatherhead waste transfer station</p> <p>Randalls Road, Leatherhead, Surrey, KT22 0BA</p>	<p>Monday to Friday 08:00 - 17:00 Summer 08:00 - 16:00 Winter Saturdays 08:00 - 16:30 Summer 08:00 - 16:00 Winter Sundays 09:00 - 16:30 Summer 09:00 - 16:00 Winter Bank holidays 09:00 - 16:30 Summer 09:00 - 16:00 Winter Closed Christmas Day, Boxing Day and New Year's Day</p>	<p>Residual Waste (including household residual, street cleanings, fly tipping, bulky non-reusable/recyclable and separately collected nappies/AHP)</p> <p>Road sweepings</p> <p>Food Waste</p> <p>Garden Waste</p>
<p>Slyfield waste transfer station</p> <p>Moorfield Road, Slyfield Green Industrial Estate, Guildford, Surrey, GU1 1RU</p>	<p>Monday to Friday 08:00 - 17:00 Summer 08:00 - 16:00 Winter Saturdays 08:00 - 16:30 Summer 08:00 - 16:00 Winter Sundays 09:00 - 16:30 Summer 09:00 - 16:00 Winter Bank holidays 09:00 - 16:30 Summer 09:00 - 16:00 Winter Closed Christmas Day, Boxing Day and New Year's Day</p>	<p>Residual Waste (including household residual, street cleanings, fly tipping, bulky non-reusable/recyclable and separately collected nappies/AHP)</p> <p>Road sweepings</p> <p>Food Waste</p>

DELIVERY SITES	OPENING HOURS FOR TIPPING	MATERIAL BY SITE
<p>Ash Vale waste transfer station</p> <p>Station Road West, Ash Vale, Aldershot, GU12 5QD</p>	<p>Monday to Friday 06:00 - 16:30</p> <p>Saturdays Closed</p> <p>Sundays Closed</p> <p>Bank holidays Closed</p>	<p>Residual Waste (including household residual, street cleanings, fly tipping, bulky non-reusable/recyclable and separately collected nappies/AHP)</p> <p>Food Waste (side tipped into a container)</p>
<p>Grundons materials recovery facility (MRF)</p> <p>Randalls Road, Leatherhead, KT22 0BA</p>	<p>Monday to Friday 07:00 - 16:00 (to arrive at weighbridge at 15:45 at the latest)</p> <p>Saturdays Closed</p> <p>Sundays Closed</p> <p>Bank holidays 07:00 - 16:00 (to arrive at weighbridge at 15:45 at the latest)</p>	<p>Dry mixed Recycling</p>
<p>KPS Composting Services</p> <p>Hardriding, Brighton Road, Pease Pottage, Crawley, West Sussex, RH11 9AA</p>	<p>Monday to Friday 08:00 - 17:00</p> <p>Saturdays 08:00 - 12:00</p> <p>Sundays Closed</p> <p>Bank holidays 08:00 - 17:00</p> <p>Closed Christmas Day, Boxing Day and New Year's Day</p>	<p>Garden Waste</p>
<p>Colliers Environmental Services</p> <p>Kitsmead Recycling Centre, Kitsmead Lane, Chertsey, Surrey, KT16 0EF</p>	<p>Monday to Friday 07:00 - 17:00</p> <p>Saturdays 07:00 - 13:00</p> <p>Sundays Closed</p> <p>Bank holidays 07:00 to 15:00</p>	<p>Garden Waste</p>

DELIVERY SITES	OPENING HOURS FOR TIPPING	MATERIAL BY SITE
<p>Grundons Maidenhead Depot</p> <p>Star Works, Star Lane, Knowl Hill, Reading, Berkshire, RG10 9XY</p>	<p>Monday to Friday 07:00 - 17:00</p> <p>Saturdays Closed</p> <p>Sundays Closed</p> <p>Bank holidays 07:00 - 12:00</p> <p>Closed Christmas Day and New Year's Day</p>	Clinical Waste
<p>Elmbridge Depot Mill Road, Esher, Surrey, KT10 8BJ</p>	<p>Monday to Friday 06:30 – 18:00</p> <p>Saturdays 06:30 – 18:00</p> <p>Sundays 08:00 – 16:00</p> <p>Bank holidays 06:30 – 18:00</p> <p><u>Other Restrictions</u></p> <p>No vehicle movements along Douglas Road and The Woodlands:</p> <ul style="list-style-type: none"> • between 08:00-09:00 and 14:45-15:45 Monday-Friday • after 13:00 on Saturdays <p>No vehicle movements at all other than those going under the bridge located on Mill Road on Sundays,</p> <p>All vehicles that are based at the depot that are of a size that are capable of negotiating the bridge located on Mill Road shall access and egress the site using that route.</p>	<p>Textiles</p> <p>WEEE</p>
<p>Mole Valley Depot Station Road, Dorking, Surrey, RH4 1EH</p>	<p>As set out in the Lease</p>	<p>Textiles</p> <p>WEEE</p>

DELIVERY SITES	OPENING HOURS FOR TIPPING		MATERIAL BY SITE
<p>Surrey Heath Depot (ONLY AVAILABLE FROM COMMENCEMENT DATE OF SERVICES TO SURREY HEATH BOROUGH COUNCIL)</p> <p>14 Doman Road, Camberley, Surrey, GU15 3DF</p>	<p>CURRENT LICENCE AND PERMIT CONDITIONS</p> <p>None: Current operating hours Monday to Friday 06:00 - 16:30 Saturdays if required Sundays not used Bank holidays if required</p> <p>Food Waste can only be side tipped into a container</p>	<p>POTENTIAL FUTURE LICENCE AND PERMIT CONDITIONS</p> <p>Monday to Friday 06:00 – 18:00 Saturdays if required Sundays If required Bank holidays if required</p> <p>Food Waste can be tipped onto the floor before being moved into a container</p>	<p>Dry mixed Recycling</p> <p>Road sweepings</p> <p>Food Waste</p> <p>Textiles</p> <p>WEEE</p>
<p>Woking Depot Monument Way East, Woking, Surrey GU21 5LY</p>	As set out in the Lease		<p>Textiles</p> <p>WEEE</p>

- 18.4 If a Delivery Site becomes unavailable, the Authorised Officer shall instruct the Service Provider as to the alternative Delivery Site(s) where Contract Waste shall be delivered.
- 18.5 The Authorities shall meet any costs for the disposal and treatment of Contract Waste and shall receive any incomes paid by the Waste Disposal Authority when Contract Waste is delivered to a Delivery Site for recycling in accordance with this Specification.
- 18.6 The Authorities may alter the Delivery Sites either temporarily or permanently during the Term.
- 18.7 The Authorities may alter the opening hours of Delivery Sites and the amount and/or type of Contract Waste that may be delivered into any Delivery Site during the Term. The Authorities shall have the right to direct certain amounts of Contract Waste to any Delivery Sites from time to time and with any reasonable notice to fulfil the operational needs and requirements of the Delivery Site operators. The Service Provider shall comply with all requests to direct Contract Waste or re-direct Contract Waste.
- 18.8 The Service Provider shall manage the process of offloading the Collection Vehicles so that the Collection Vehicles can enter the Delivery Site, offload Contract Waste, and conduct the necessary weighing activities as quickly as is reasonably possible.

- 18.9 The Authorities shall not be responsible for any delay caused at any of the Delivery Sites and the Service Provider shall not be able to claim any additional costs arising from such delays.
- 18.10 Upon delivering Contract Waste to the Delivery Site, the Service Provider shall make a visual appraisal of the discharged load prior to departing the Delivery Site. If he considers the load may be rejected, or is advised by the Delivery Site operator that the Contract Waste is contaminated to an unsatisfactory level beyond the Acceptance Criteria, the Service Provider shall notify the Authorised Officer and record the incident appropriately. Any dispute about whether the Acceptance Criteria for the load delivered at the Delivery Site or at the Reprocessor's Site has been exceeded shall be referred to the Authorised Officer for resolution.
- 18.11 Where a load is rejected and the Authorised Officer determines that the rejection is due to the Service Provider failing in its obligations under this Specification, then the Service Provider shall be responsible for all additional costs incurred in the onwards transportation, disposal and loss of income of the rejected material.
- 18.12 In the event that the Service Provider is required to manage the Surrey Heath depot for bulking operations, the following conditions shall apply:
- 18.12.1 all mixed Dry Recycling delivered to the depot must be stored at the agreed location and contained within the designated area in such a way as to prevent escape. The entire depot area must be kept in a clean and tidy condition at all times and any unacceptable material must be removed and disposed as residual waste;
- 18.12.2 mixed Dry Recycling shall be loaded quickly and efficiently for onward processing, and on a regular basis, ensuring the facility is never more than 50% full, using a loading shovel or grab provided and maintained by the Service Provider. The shovel/grab should be available throughout the Working Day including weekends if required and shall only be used in connection with operations associated with the Services; and
- 18.12.3 Food Waste and street cleaning arisings may also be bulked at this depot.

19 ASSET MANAGEMENT

- 19.1 **Output 20 (Asset Management): All Assets used in the delivery of the Services are provided, managed, maintained and where necessary replaced by the Service Provider.**
- 19.2 The Service Provider shall:
- 19.2.1 be responsible for the provision of adequate Assets to deliver the Services;
- 19.2.2 provide Collection Vehicles, plant and equipment of a design and condition which are suitable for the delivery and performance of the Services in accordance with this Specification (including standard, narrow and other specialist Collection Vehicles);

- 19.2.3 provide sufficient front-line and reserve/spare Collection Vehicles, plant and equipment at all times. A lack of suitable Collection Vehicles, plant and equipment shall not be considered a valid reason for non-performance of the Services in accordance with the Contract;
- 19.2.4 be fully responsible for licensing all Collection Vehicles, plant and equipment and for the payment of all licensing fees, taxes, fuel and insurance premiums required in connection with or arising out of maintenance, repair, replacement and use of all Collection Vehicles, plant and equipment employed in the performance of the Services; and
- 19.2.5 permit the Authorised Officer and all other authorised users of the Authorities access to inspect all relevant records and information relating to the management of Assets.

20 CONTAINERS MANAGEMENT

- 20.1 **Output 21 (Containers): The Containers are managed effectively by the Service Provider and Service Users are in receipt of the appropriate Containers to take part in the Services.**
- 20.2 In relation to the bulk purchase of new Containers, the Service Provider shall obtain quotations and submit these to the Authorised Officer so that the Authorised Officer may compare such quotations with framework agreements accessible to the Authorities. If the Authorised Officer accepts the quotations forwarded by the Service Provider, the Service Provider shall purchase such new Containers accordingly. If the Authorities do not accept the Service Provider quotation, the Authorities shall be responsible for bulk purchase of new Containers they purchase.
- 20.3 In respect of any new Containers purchased by the Service Provider, the Authorities or individual property owners/managers shall pay the Service Provider for the purchase of such new Containers at the quotation cost accepted by the Authorised Officer (or if lower, the actual cost paid by the Service Provider) in paragraph 20.2 above (and such quotation cost or actual purchase cost shall not be subject to Indexation) when the Container is delivered in accordance with waste policies. The cost for the Container shall be added to the delivery charge, as specified in the Pricing Schedule.
- 20.4 In addition to the bulk purchase provisions set out above, the Service Provider shall be responsible for the replacement of Containers at its cost where the damage to the Containers is as a result of inappropriate behaviour or practice of the Service Provider's Personnel, inappropriate Collection Vehicle settings for lifting Containers or Containers not returned as set out in this Specification.
- 20.5 The Service Provider shall be responsible for supplying replacement sacks, to households and sacks or bin liners for all relevant Containers. This shall include:
 - 20.5.1 waste and recycling sack deliveries to households, twice yearly, as instructed by the Authorised Officer;

- 20.5.2 food waste liners to households, annually to households in Street Level Properties, as instructed by the Authorised Officer;
- 20.5.3 Containers used for the Food Waste Collection Service from households in Communal Bin Properties (paragraph 28); and
- 20.5.4 Street litter bins and dog waste bins (paragraph 54).
- 20.6 Irrespective of whether the Service Provider or the Authorities have purchased the Containers, the Service Provider shall:
 - 20.6.1 produce and maintain a system of stock control of Containers;
 - 20.6.2 provide premises for the safe and secure storage of all Containers;
 - 20.6.3 collect Containers for disposal, repair, refurbishment and storage within 5 Working Days of the Authorised Officer's instruction;
 - 20.6.4 make arrangements for the cleaning, repair and refurbishment of all Containers prior to returning to the Services or for placing in temporary storage;
 - 20.6.5 repair and refurbish Containers within 10 Working Days of receiving returned stock;
 - 20.6.6 save as a result of a requirement for new Containers arising out of a Service re-design or new Services, deliver, upon instruction from the Authorised Officer, Containers to households within 5 Working Days of the instruction. The Container shall be left within the property boundary. New and replacement Containers shall be delivered and the appropriate communications media supplied by the Authorities shall be posted through the relevant households letterbox; and
 - 20.6.7 on request from the Authorised Officer provide a price for delivery of Containers for Service re-design or new Services and, if instructed by the Authorised Officer, deliver such Containers.
- 20.7 In respect of any Container stocks purchased by the Service Provider during the Term, the Authorities shall purchase any remaining Container stocks (less any which are in a condition such that they are not suitable for delivery to Service Users) owned by the Service Provider at the lesser of the quotation cost and book value as at the Termination Date.

OPERATIONAL REQUIREMENTS: WASTE COLLECTION SERVICE

21 WASTE COLLECTION SERVICE FROM HOUSEHOLDS

- 21.1 The Service Provider shall manage and deliver all Services within the scope (as set out in paragraph 2 of this Specification).
- 21.2 **Output 22 (Waste Collection Service):** The Service Provider plans and delivers the Waste Collection Service and meets the Authorities' performance and monitoring standards.
- 21.3 **Output 23 (Scheduled Collections of waste):** The Service Provider delivers the Scheduled Collections of waste (Scheduled Waste Collections) to:
- (a) maximise the amount of waste segregated for reuse, recycling, and composting;
 - (b) minimise missed collections;
 - (c) provide timely remedial action in the event of missed collections;
 - (d) ensure that receptacles are collected, emptied and returned to the specified Collection Point;
 - (e) ensure the prevention and clearance of any spillage; and
 - (f) minimise contamination of segregated waste.
- 21.4 The Service Provider shall provide the Scheduled Waste Collections in accordance with the Authorised Officer's approval.
- 21.5 The Service Provider shall manage and deliver the following waste collection services:

22 RESIDUAL WASTE COLLECTIONS FROM HOUSEHOLDS IN STREET LEVEL PROPERTIES

- 22.1 The Service Provider shall provide households with a Residual Waste collection (**Residual Waste Collection**) once every fortnight. Requirements for Scheduled Collection Days from households in Street Level Properties are detailed in paragraph 31. Requirements for Collection Points from households in Street Level Properties are detailed in paragraph 33. Subject to the exceptions in paragraphs 22.2, 22.3 and 22.4, such Residual Waste will be presented for collection in a designated Wheeled Bin.
- 22.2 Where notified by the Authorised Officer that a household is entitled to present more than one designated Wheeled Bin, the Service Provider shall empty each additional designated Wheeled Bin(s) as part of that household's Scheduled Collection.
- 22.3 Where notified by the Authorised Officer that a household will present Residual Waste in Single Use Sacks, the Service Provider shall collect the Single Use Sacks as part of that household's Scheduled Collection.

- 22.4 Where notified by the Authorised Officer that a household requires more frequent Residual Waste Collections, the Service Provider shall provide that household's Scheduled Collection at the frequency specified.
- 22.5 The Service Provider shall not collect Excess Residual Waste set out by households as part of the Scheduled Collection of Residual Waste and shall leave a notification with the household which informs the household of the reason why the Excess Residual Waste was not collected in the format determined and provided by the Authorised Officer and report the details of the incident to the Authorised Officer through the Information Technology System
- 22.6 The Authorised Officer may specify that the Excess Residual Waste policy shall not apply in one or more Authority Area for Scheduled Collections of Residual Waste during the Christmas and New Year bank holiday catch up period.
- 22.7 The Service Provider shall not empty Containers presented incorrectly as part of the Scheduled Collection of Residual Waste and shall leave a notification with the household which informs the household of the reason why the Container was not emptied in the format determined and provided by the Authorised Officer. This shall include, but not be limited to, Containers not presented at Collection Points.

23 DRY RECYCLING COLLECTIONS FOR HOUSEHOLDS IN STREET LEVEL PROPERTIES

- 23.1 The Service Provider shall provide households with a Dry Recycling collection (**Dry Recycling Collection**) once every fortnight. Requirements for Scheduled Collection Days from households in Street Level Properties are detailed in paragraph 31. Requirements for Collection Points from households in Street Level Properties are detailed in paragraph 33. Subject to the exceptions in paragraphs 23.2, 23.3 and 23.4, such Dry Recycling will be presented for collection in a designated Wheeled Bin.
- 23.2 Where notified by the Authorised Officer that a household is entitled to present more than one designated Wheeled Bin, the Service Provider shall empty each additional designated Wheeled Bin(s) as part of that household's Scheduled Collection.
- 23.3 Where notified by the Authorised Officer that a household will present Dry Recycling in containers which are not Wheeled Bins (including but not limited to Single Use Sacks or boxes), the Service Provider shall empty these Containers or collect the Single Use Sacks as part of that household's Scheduled Collection.
- 23.4 Where notified by the Authorised Officer that a household requires more frequent Dry Recycling Collections, the Service Provider shall provide that household's Scheduled Collection at the frequency specified.
- 23.5 The Service Provider shall collect any Excess Dry Recycling set out by households as part of the Scheduled Collection of Dry Recycling.
- 23.6 The Service Provider shall not empty Containers presented incorrectly as part of the Scheduled Collection of Dry Recycling and shall leave a notification with the household which informs the household of the reason why the Container was not emptied in the format determined and provided by the Authorised Officer and report the details of the

incident to the Authorised Officer through the Information Technology System. This shall include, but not limited to, Containers not presented at Collection Points.

- 23.7 The Service Provider shall provide households with a scheduled weekly collection of batteries, WEEE and textiles (**Other Recycling Materials**) contained in a securely tied sack.

24 FOOD WASTE COLLECTIONS FROM HOUSEHOLDS IN STREET LEVEL PROPERTIES

- 24.1 The Service Provider shall provide households with a Food Waste collection (**Food Waste Collection**) once a week. Requirements for Scheduled Collection Days from households in Street Level Properties are detailed in paragraph 31. Requirements for Collection Points from households in Street Level Properties are detailed in paragraph 33. Subject to the exceptions in paragraphs 24.2 and 24.3, such Food Waste will be presented for collection in a designated Food Waste Kerbside Container.
- 24.2 Where notified by the Authorised Officer that a household will present more than one Food Waste Kerbside Container, the Service Provider shall empty any additional Food Waste Kerbside Container(s) as part of that household's Scheduled Collection.
- 24.3 For the avoidance of doubt, the Authorities provide households with a Kitchen Caddy for internal use to store Food Waste prior to transfer to the Food Waste Kerbside Container and the Service Provider shall empty Kitchen Caddies if they are set out by households as part of that household's Scheduled Collection.
- 24.4 The Service Provider shall not empty Containers presented incorrectly as part of the Scheduled Collection of Food Waste and shall leave a notification with the household which informs the household of the reason why the Container was not emptied in the format determined and provided by the Authorised Officer and report the details of the incident to the Authorised Officer through the Information Technology System. This shall include, but not limited to, Containers not presented at Collection Points.

25 GARDEN WASTE COLLECTIONS FROM HOUSEHOLDS IN STREET LEVEL PROPERTIES

- 25.1 The Authorities offer households an optional Garden Waste Collection Service as a chargeable service. Those households request the Garden Waste Collection Service from the Authorities and pay the Authorities an Annual Subscription Fee (**Subscribing Households**). The Annual Subscription Fee is set and may be altered at the Authorities' discretion during the Term. The income from the Annual Subscription Fee is retained by the Authorities.
- 25.2 The Service Provider shall provide all Subscribing Households with a Garden Waste collection (**Garden Waste Collection**) once every fortnight. Requirements for Scheduled Collection Days from Subscribing Households in Street Level Properties are detailed in paragraph 31. Requirements for Collection Points from Subscribing Households in Street Level Properties are detailed in paragraph 33. Subject to the exception in paragraphs 25.3 and 25.4, such Garden Waste will be presented for collection in a designated Wheeled Bin.

- 25.3 Where notified by the Authorised Officer that a Subscribing Household will present Garden Waste using Reusable Garden Waste Sacks, the Service Provider shall empty these Sacks as part of that Subscribing Household's Scheduled Collection.
- 25.4 Where notified by the Authorised Officer that a Subscribing Household has subscribed to present Garden Waste in more than one Wheeled Bin and/or Reusable Garden Waste Sack, the Service Provider shall empty any additional Wheeled Bin(s) and/or Reusable Garden Waste Sack(s) as part of that Subscribing Household's Scheduled Collection.
- 25.5 Subscribing Households may discontinue their participation in the Garden Waste Collection Service on giving 4 Working Weeks' notice to the Authorities. The Authorised Officer shall be responsible for notifying the Service Provider of the details of those Subscribing Households who are terminating participation in the Garden Waste Collection Service with the effective date of termination (which shall expire at 23:59 on that Subscribing Household's Scheduled Collection Day) and the Service Provider shall discontinue the Garden Waste Collection Service from those households accordingly.
- 25.6 The Authorised Officer shall be responsible for notifying the Service Provider of the details of those Subscribing Households who are new participants in the Garden Waste Collection Service with the effective date of the service commencement (which shall commence at 00:01 on a Scheduled Collection Day falling no later than 10 Working Days (a Working Day being a day falling on Monday to Friday excluding Saturdays, Sundays and Bank and Public Holidays in England) from the date of notification) and the Service Provider shall provide those new Subscribing Households with a Garden Waste Collection Service once a fortnight.
- 25.7 The Authorised Officer shall be responsible for notifying the Service Provider of the details of those Subscribing Households who have not renewed their participation in the Garden Waste Collection Service with the effective date of termination (which shall expire at 23:59 on that Subscribing Household's Scheduled Collection Day). The Service Provider shall discontinue the Garden Waste Collection Service from those households and remove the Container(s) where instructed. Arrangements for Containers management are set out in paragraph 20 of this Specification.
- 25.8 The Authorised Officer may specify that the Scheduled Collection of Garden Waste in one or more Authority Area is discontinued for one collection during the Christmas and New Year bank holiday period.

26 RESIDUAL WASTE COLLECTIONS FROM HOUSEHOLDS IN COMMUNAL BIN PROPERTIES

- 26.1 The Service Provider shall provide households with a Residual Waste collection (**Residual Waste Collection**) at the specified frequency. Such Residual Waste will be presented for collection in a designated Container. Requirements for Collection Points from households in Communal Bin Properties are detailed in paragraph 33.

26.2 The Service Provider may combine the Residual Waste Collection from households in Communal Bin Properties with the Residual Waste Collection from households in Street Level Properties on the same Residual Waste collection round.

26.3 The Service Provider shall collect Excess bagged Residual Waste at a Communal Bin Properties' Collection Point and report the details of the incident to the Authorised Officer through the Information Technology System. The Authorities shall contact households and managing agents of communal properties to endeavour to reduce or remove re-occurrences of Excess Residual Waste. The Authorised Officer shall report back to the Service Provider with details of the outcome of the investigation and future collections at the site.

27 DRY RECYCLING COLLECTIONS FROM HOUSEHOLDS IN COMMUNAL BIN PROPERTIES

27.1 The Service Provider shall provide households with a Dry Recycling collection (**Dry Recycling Collection**) at the specified frequency. Such Dry Recycling will be presented for collection in a designated Container. Requirements for Collection Points from households in Communal Bin Properties are detailed in paragraph 33.

27.2 The Service Provider may combine the Dry Recycling Collection from households in Communal Bin Properties with the Dry Recycling Collection from households in Street Level Properties on the same Dry Recycling collection round.

27.3 The Service Provider shall collect suitably presented Excess Dry Recycling at a Communal Bin Properties' Collection Point and report the details of the incident to the Authorised Officer through the Information Technology System. The Authorities shall contact households and managing agents of communal properties to endeavour to provide additional Containers.

27.4 In certain Authority Areas, Other Recycling Materials, namely textiles, WEEE and batteries are collected in designated Containers, such as but not limited to sack holders. For those Authority Areas, the Service Provider shall collect these materials as part of the Scheduled Collection from the designated Containers and replace the liners in the sack holders as may be required.

28 FOOD WASTE COLLECTIONS FROM HOUSEHOLDS IN COMMUNAL BIN PROPERTIES

28.1 The Service Provider shall provide households with a collection of Food Waste once a week. Such Food Waste will be presented for collection in one or more designated Wheeled Bin(s) or Food Waste Kerbside Containers. The number of designated Wheeled Bins and Food Waste Kerbside Containers will be dependent on the capacity requirements of each of the Communal Bin Properties. Requirements for Collection Points from households in Communal Bin Properties are detailed in paragraph 33.

28.2 The Service Provider may combine the Food Waste collection from households in Communal Bin Properties with the Food Waste collection from households in Street Level Properties on the same Food Waste collection round.

- 28.3 The Service Provider shall collect suitably presented excess Food Waste at a Communal Bin Properties' Collection Point and report the details of the incident to the Authorised Officer through the Information Technology System. The Authorities shall contact households and managing agents of Communal Bin Properties to endeavour to provide additional Containers. In certain Authority Areas, Food Waste is collected from a communal container which contains a bin liner. In such circumstances the Service Provider upon emptying such a communal container will replace the liner securely in the communal container as may be required.

29 GARDEN WASTE COLLECTIONS FROM HOUSEHOLDS IN COMMUNAL BIN PROPERTIES

- 29.1 The Authorities offer households an optional Garden Waste Collection Service as a chargeable service. Those households request the Garden Waste Collection Service from the Authorities and pay the Authorities an Annual Subscription Fee (**Subscribing households**). The Annual Subscription Fee is set by the Authorities and may be altered at the Authorities' discretion during the Term.
- 29.2 The Service Provider shall provide all Subscribing Households with a Garden Waste Collection once every fortnight. Subject to the exception in paragraphs 29.3 and 29.4, such Garden Waste will be presented for collection in a designated two Wheeled Bin. Requirements for Collection Points from Subscribing Households in Communal Bin Properties are detailed in paragraph 33.
- 29.3 Where notified by the Authorised Officer that a Subscribing Household will present Garden Waste using Reusable Garden Waste Sacks, the Service Provider shall empty these Sacks as part of that Subscribing Household's Scheduled Collection.
- 29.4 Where notified by the Authorised Officer that a Subscribing Household has subscribed to present Garden Waste in more than one Wheeled Bin and/or Reusable Garden Waste Sack, the Service Provider shall empty any additional Wheeled Bin(s) and/or Reusable Garden Waste Sack(s) as part of that Subscribing Household's Scheduled Collection.
- 29.5 Subscribing Households may discontinue their participation in the Garden Waste Collection Service on giving 4 Working Weeks' notice to the Authorities. The Authorised Officer shall be responsible for notifying the Service Provider of the details of those Subscribing Households who are terminating participation in the Garden Waste Collection Service with the effective date of termination (which shall expire at 23:59 on that Subscribing Household's Scheduled Collection Day) and the Service Provider shall discontinue the Garden Waste Collection Service from those households accordingly.
- 29.6 The Authorised Officer shall be responsible for notifying the Service Provider of the details of those Subscribing Households who are new participants in the Garden Waste Collection Service with the effective date of the service commencement (which shall commence at 00:01 on a Scheduled Collection Day falling no later than 10 Working Days (a Working Day being a day falling Monday to Friday excluding Saturdays, Sundays

and Bank and Public Holidays in England) from the date of notification) and the Service Provider shall provide those new Subscribing Households with a Garden Waste Collection Service once a fortnight.

- 29.7 The Authorised Officer shall be responsible for notifying the Service Provider of the details of those households who have not renewed their participation in the Garden Waste Collection Service with the effective date of termination (which shall expire at 23:59 on that household's Scheduled Collection Day). The Service Provider shall discontinue the Garden Waste Collection Service from those households and remove the Container(s) accordingly. Arrangements for Containers management are set out in paragraph 20 of this Specification.
- 29.8 The Service Provider may combine the Garden Waste Collection from Communal Bin Properties with the Garden Waste Collection from Subscribing Households in Street Level Properties on the same Garden Waste collection round.
- 29.9 The Authorised Officer may specify that the Scheduled Collection of Garden Waste in one or more Authority Area is discontinued for one collection during the Christmas and New Year bank holiday period.

30 BRING SITES RECYCLING COLLECTIONS

- 30.1 The Service Provider shall collect Dry Recycling from Bring Sites at the frequency required to ensure that Containers do not become full or/and overflowing and in doing so will have due regard to the impact of servicing such Bring Sites on Bring Site neighbours. The Service Provider is not required to perform this service across the whole of the Authorities' Area and this service applies to the Authority Area of Elmbridge Borough Council.
- 30.2 The Service Provider may collect Dry Recycling from Bring Sites on the same collection rounds provided to households in Street Level Properties and households in Communal Bin Properties.

31 COLLECTION DAYS

- 31.1 The Service Provider shall provide households in Street Level Properties with Residual Waste or Dry Recycling and Food Waste and Garden Waste Collections and small WEEE and textiles on the same day of the week (**Scheduled Collection Day**).
- 31.2 The Service Provider shall not alter the Scheduled Collection Day of any household without the prior written consent of the Authorised Officer. If the Service Provider wishes to alter a Scheduled Collection Day, the Service Provider shall submit details of its proposal in writing to the Authorised Officer, specifying the proposed changes and the rationale for the request, including the impact on households and the benefits to the Authorities and/or the Service Provider of altering the Scheduled Collection Day.
- 31.3 Where the Service Provider submits a proposal to alter a Scheduled Collection Day for one or more households within six months of the applicable Service Commencement Date for such household(s), the Authorised Officer shall not unreasonably withhold or

delay consent. Other requests to alter a Scheduled Collection Day shall be considered on a case by case basis.

- 31.4 The Authorised Officer has the unqualified right to withhold consent to proposals from the Service Provider to alter a Scheduled Collection Day for a household where the proposal would result in more than one change to a Scheduled Collection Day for such household in any three year period.
- 31.5 The Service Provider shall reschedule collections to catch up at the earliest opportunity, within the same Working Week where practicable, following disruption to services for any reason, including inclement weather. No additional payment will be made to the Service Provider in respect of any additional expenses the Service Provider may incur in complying with this requirement.

32 ADDITIONAL INSTRUCTED COLLECTION

- 32.1 Following any Scheduled Collection and upon receipt of an instruction from the Authorised Officer the Service Provider shall return within 2 Working Days to collect any Contract Waste. If this instruction arises from circumstances which are not associated with a failure of the Service Provider to meet its obligations under this Specification, the instruction to return to collect shall be classified as an Additional Instructed Collection.
- 32.2 The Authorities shall pay the Service Provider for any Additional Instructed Collection at the applicable Unit Rate specified for that Rate Item in the Pricing Schedule.

33 COLLECTION POINTS AND AGREED COLLECTION POINTS

- 33.1 For Street Level Properties the default Collection Point shall be a Curtilage Collection, which is the area within the property boundary and at the edge of the property boundary adjacent to the highway but not on the highway. Where the Authorised Officer has notified an alternative collection point to the Service Provider, the Collection Point shall be that agreed Collection Point (**Agreed Collection Point**).
- 33.2 For Communal Bin Properties the default Collection Point shall be an area located within the general curtilage of the Communal Bin Properties, which may be a bin store or a dedicated housing unit. Where the Authorised Officer has notified an alternative collection point to the Service Provider the Collection Point shall be that Agreed Collection Point.
- 33.3 Where the default Collection Point is from a dedicated housing unit the Service Provider shall ensure that the exterior of the dedicated housing unit is clean and free of dirt, other markings and spillages before the Service Provider's Personnel and Collection Vehicle leave the Collection Point.
- 33.4 After emptying, the Containers shall be returned in an upright position, with any fitted lid closed, any locking mechanism locked, and any doors or gates shut and/or locked to the Collection Point or the Agreed Collection Point.
- 33.5 The Service Provider shall not return Containers:

- 33.5.1 so as to block or obstruct footpaths or driveways, cause damage to planted areas; or
- 33.5.2 to the Adopted Highway unless the Service Provider has been notified by the Authorised Officer.

34 ACCESS ISSUES

- 34.1 The Service Provider shall deliver the Services to ensure Scheduled Collections from narrow and restricted access roads, including unadopted (i.e. private) roads. The Service Provider shall be aware that the Collection Point at these properties may not be at the boundary of the property.
- 34.2 The Authorised Officer shall ensure that the Service Provider has all appropriate keys, security fobs, security codes and equipment for the opening and closing of locked gates, bin stores, barriers, drop bollards so as to ensure Scheduled Collections from households in Street Level Properties and Communal Bin Properties. The Service Provider shall ensure that its Service Provider's Personnel keep all such keys, security fobs, security codes and equipment in a secure/confidential manner. The Service Provider shall not obtain any additional or replacement keys, security fobs, security codes and equipment except from the Authorised Officer at the Service Provider's expense.
- 34.3 The Service Provider, in delivering the Services, shall open, close and lock all gates, doors, barriers, drop bollards as required.
- 34.4 The Service Provider shall promptly report any access problems to the Authorised Officer and take all reasonable steps to gain access to provide the Scheduled Collections to meet its performance obligations under this Specification.
- 34.5 When any construction or maintenance work is carried out on a part of any street within the Authorities' Area, or access cannot be gained due to temporary road closures or obstructions, the Service Provider shall make every reasonable attempt to perform and carry out the Services on the Scheduled Collection Day. The Service Provider shall be responsible for making further attempts to provide the Services to all affected properties on the Scheduled Collection Day. In all situations collections are to be made from all affected properties within 2 Working Days of the Scheduled Collection Day. Any obstructions shall be communicated promptly via the Service Provider's ITS with an estimated time to re-visit in order to keep customers informed.

35 LITTER AND SPILLAGES

- 35.1 The Service Provider shall ensure that litter and spillages resulting from the provision or use of Services, whether caused by the Service Provider's Personnel or not, are properly swept up and cleared before the Service Provider's Personnel and Collection Vehicle leave the road or premises where the litter or spillages occurred.
- 35.2 If there is a breach of paragraph 35.1, the Service Provider shall return and rectify the spillage of litter within two Working Hours (the **Rectification Period**).

36 OPERATIONAL HOURS

The Service Provider shall not carry out collections from households outside the hours of 06:00 to 20:00, Monday to Saturday (**Maximum Operational Hours**). In exceptional circumstances such as but not limited to during or after an emergency or exceptionally inclement weather, the Authorised Officer may permit the Service Provider to extend the Maximum Operational Hours.

37 COLLECTION SERVICE HOLIDAYS

- 37.1 The Service Provider shall treat all Bank and Public Holidays except Christmas Day (25th December), Boxing Day (26th December) and New Year's Day (1 January) as Working Days.

38 DELIVERY OF COMMUNICATIONS

- 38.1 The Service Provider may be required to deliver the following communications activities on behalf of the Authorities:
- 38.1.1 vehicle communications media: Collection Vehicles and other relevant Assets shall be provided with the option of installation of vehicle communications media (removable and replaceable). The Service Provider shall be required at no extra cost to install advertising as required. The Authorities shall bear the cost of producing vehicle communications media;
 - 38.1.2 service information leaflets and other promotional communications as may be required as part of the Services: the Authorities shall pay for the production and the cost of delivery of service information leaflets and other promotional communications and the Service Provider shall deliver service information leaflets and other promotional communications to households in the Authorities' Area;
 - 38.1.3 stickers and bin hangers: the Authorities shall pay for the production of stickers and bin hangers to inform households of non-compliance issues (such as Contrary Materials, excess waste, Containers presented at an incorrect Collection Point) or other promotional service-related messages and the Service Provider shall leave stickers and bin hangers with households during the Scheduled Collection.

39 CONTRARY MATERIALS

- 39.1 Prior to emptying any Container the Service Provider's Personnel shall inspect the visible contents of the Containers for Contrary Materials and determine whether the contents are likely to meet the Acceptance Criteria.
- 39.2 Where the Service Provider finds Contrary Materials and determines that the contents will fail to meet the Acceptance Criteria, the Service Provider shall take the following actions:
- 39.2.1 Not used

- 39.2.2 Street Level Properties – the Container shall be left un-emptied and a notification left which informs the household of the reason why the Container was not emptied and what steps should be taken to rectify the situation. The Authorised Officer may instruct the Service Provider to collect the contaminated recycling and to dispose of the waste as Residual Waste on the next scheduled Residual Waste collection day at no additional cost to the Authorities;
- 39.2.3 Communal Bin Properties – Where the extent and/or the nature of the Contrary Materials make it impractical to remove them, the Container shall be left un-emptied and the Service Provider shall label the Container to explain what arrangements will be made to empty the Container on either the same day or at the latest the following Working Day.
- 39.3 The Service Provider shall record and report to the Authorised Officer any location where Contrary Materials are found using the Information Technology System. The Authorities shall contact households and/or managing agents in relation to Communal Bin Properties to reduce or remove re-occurrences of Contrary Materials.

40 NEW DEVELOPMENTS

- 40.1 The Service Provider shall provide Waste Collection Services to households in any new developments once any properties are occupied, notwithstanding that the roads in the development may not be in the register of Adopted Highways.
- 40.2 The Authorised Officer shall advise the Service Provider of any roads and properties to which this applies. The Service Provider shall report to the Authorised Officer any new properties which are occupied for which an instruction has not been received.

41 ASSISTED COLLECTIONS

- 41.1 In respect of those households who are determined by the Authorised Officer as qualifying for an Assisted Collection, such households will be included on the list of Assisted Collections (**Assisted Collections List**).
- 41.2 In respect of each household included in the Assisted Collections List, the Service Provider shall, on the normal Scheduled Collection Day, collect or empty the Containers from an Agreed Collection Point and shall return the emptied Container to the Agreed Collection Point.
- 41.3 The Authorities shall receive applications from households for Assisted Collections. The Authorities may make reasonable checks relating to the capacity of the new and existing applicants for Assisted Collections. The Authorities shall then place all successful or continuing applicants on the Assisted Collections List.
- 41.4 Additions and cancellations on the Assisted Collections List shall be notified by the Authorised Officer to the Service Provider.

42 OTHER NON-DOMESTIC SOURCES

- 42.1 The Service Provider shall:

- 42.1.1 collect Residual Waste, Dry Recycling, Garden Waste and Food Waste from Other Non-Domestic Sources upon instruction of the Authorised Officer;
- 42.1.2 be entitled to collect waste from Other Non-Domestic Sources with waste collected from households and/or Commercial Waste on the condition that the Service Provider provides an acceptable and accurate method for accounting the weight of the Waste arising from Other Non-Domestic Sources; and
- 42.1.3 apply the servicing rules described in Output 23 to Other Non-Domestic Sources too.

43 COMMERCIAL WASTE COLLECTION SERVICE - PROVISIONAL

- 43.1 **Output 24 (Scheduled Commercial Waste Collections): The Commercial Waste Collection Service is managed effectively, maximises income to the Authorities and maximises the amount of waste segregated for reuse, recycling and composting.**
- 43.2 The Service Provider shall:
 - 43.2.1 design, market and manage the Commercial Waste Collection Service to include the collection of Residual Waste, Dry Recycling Waste and Food Waste;
 - 43.2.2 provide a price and a standard service contract for a Commercial Waste Collection Service upon request from any commercial premises within the Authorities' Area;
 - 43.2.3 provide the Scheduled Collection of Commercial Waste Service to all commercial premises that have a valid service contract;
 - 43.2.4 the Authorities may elect to request the Service Provider to provide and manage a Scheduled Collection of Commercial Waste Service to any of the Authorities' premises;
 - 43.2.5 operate and administer the charging system for the Commercial Waste Collection Service which shall include invoice generation and administration;
 - 43.2.6 accurately measure and record separately household and Commercial Waste tonnage. Where it is agreed with the Authorised Officer that this is not possible, for example in the case of sack collections, average weights shall be used;
 - 43.2.7 deliver the service to minimise contamination; and
 - 43.2.8 develop and implement innovative solutions in regards to the Commercial Waste Collection Service which benefit the Authorities.

44 COLLECTION OF OTHER MATERIALS

NAPPIES AND ABSORBENT HYGIENE PRODUCTS COLLECTION SERVICE (PROVISIONAL)

- 44.1 The Authorities shall offer households a separate collection of nappies and absorbent hygiene products (AHP).

- 44.2 The Service Provider shall provide all households that have requested the service with a weekly collection of nappies and AHP, as instructed by the Authorised Officer, on the same Scheduled Collection Day as their Residual, Dry Recycling and Food Waste. Requirements for Collections Points are detailed in paragraph 33. Nappies and AHP shall be presented for collection in tiger sacks which may or may not be contained in a designated kerbside Container for Nappies and AHP (**Nappies and AHP Kerbside Container**).
- 44.3 The Service Provider shall empty any additional Nappies and AHP Kerbside Container(s) as part of that household's Scheduled Collection.
- 44.4 The Service Provider shall supply households with a supply of tiger sacks on commencement of the service and provide replacement sacks as required. This activity shall be included within the price.
- 44.5 Households that have requested the service may discontinue their participation in the Nappies and AHP Collection Service on giving 4 Working Weeks' notice to the Authorities. The Authorised Officer shall be responsible for notifying the Service Provider of the details of those households who are terminating participation in the Nappies and AHP Collection Service with the effective date of termination (which shall expire at 23:59 on that household's Scheduled Collection Day) and the Service Provider shall discontinue the Nappies and AHP Collection Service from those households accordingly.
- 44.6 The Authorised Officer shall be responsible for notifying the Service Provider of the details of those households who are new participants in the Nappies and AHP Collection Service with the effective date of the service commencement (which shall commence at 00:01 on a Scheduled Collection Day falling no later than 10 Working Days (a Working Day being a day falling on Monday to Friday excluding Saturdays, Sundays and Bank and Public Holidays in England) from the date of notification) and the Service Provider shall provide those new households with a Nappies and AHP Collection Service once a week.

45 CLINICAL WASTE COLLECTION SERVICE

- 45.1 The Authorities offer a Clinical Waste Collection Service to households that require it. The Authorised Officer shall notify the Service Provider of households that require a Clinical Waste Collection Service. Clinical Waste collections of sacks are provided at intervals depending upon the households' needs, with a maximum frequency of once a week. Clinical Waste collections of sharps boxes are provided on demand, as instructed by the Authorised Officer. Where the collection is made at agreed intervals the collection shall take place on the same day of the week for each collection, but this collection day may differ to the collection day for Residual Waste or Dry Recycling.
- 45.2 The Service Provider shall collect Clinical Waste in the colour coded sacks and in sharps boxes for each household as instructed by the Authorised Officer, to include:
- 45.2.1 orange sacks – for infectious or potentially infectious material. This material is treated by autoclave;

- 45.2.2 yellow sacks and yellow sacks with purple stripes – for hazardous material. This material is sent for high temperature incineration; and
- 45.2.3 boxes for sharps or unused medication of any colour. This material is sent for high temperature incineration.
- 45.3 Clinical Waste shall be collected from the Agreed Collection Point as instructed by the Authorised Officer. Replacement sacks of the same colour, size and number shall be left at the Agreed Collection Point. Any size sharps box shall be collected and replacement boxes of the colour and size as instructed by the Authorised Officer shall be left at the Agreed Collection Point.
- 45.4 The Service Provider shall record and report to the Authorised Officer where households do not present Clinical Waste.

46 BULKY WASTE COLLECTION SERVICE

- 46.1 The Authorities offer households an on demand chargeable Bulky Waste Collection Service. The charge is set by the Authorities and may be altered at the Authorities' discretion during the Term. The Service Provider may choose to sub-contract this service to another organisation such as a third sector furniture reuse organisation to maximise reuse and recycling in line with the Surrey Waste Partnership Joint Municipal Waste Strategy.
- 46.2 The Service Provider shall collect Bulky Waste within one calendar week from the collection booking date and shall agree to collect no more than 10 items per collection. Collection slots of at least AM or PM should be offered as minimum.
- 46.3 The Service User shall be notified on the day of collection by telephone or SMS of the estimated time that their collection will take place. The Bulky Waste shall be collected from the Agreed Collection Point, as instructed by the Authorised Officer, which may include a location inside the Service User's property.
- 46.4 The Service Provider shall provide reports that include the type and number of items collected, the addresses collection are made from and the tonnage diversion to reuse and recycling from Bulky Waste using up-to-date Furniture Reuse Network (FRN) average weights.
- 46.5 The Service Provider shall not be required to deliver all collected Bulky Waste to the named Delivery Sites. The Service Provider may seek outlets or work with third sector organisations to seek outlets for reusable and recyclable Bulky Waste.

OPERATIONAL REQUIREMENTS: STREET CLEANING SERVICE

47 INTRODUCTION

- 47.1 The Service Provider is not required to perform the Cleaning Service across the whole of the Authorities' Area and this service does not apply to the Authority Area of Woking Borough Council.
- 47.2 The width to be cleaned includes the full extent of the Adopted Highway, including back lines, hard or grass verges, footpaths, cycle lanes, channels, ditch lines, both carriageways, central islands and associated grassed areas.
- 47.3 In respect of the data provided to the Service Provider, the lengths are the lengths of the central line of the highway, and the widths are the full width of the highway as explained above. Area based measurements may be given for separate associated open spaces near the Adopted Highway.

48 GENERAL CLEANING REQUIREMENTS

- 48.1 The Service Provider shall clean the Street Cleaning Areas as set out in this Specification (**Street Cleaning Services**) in accordance with the Cleaning Performance Standards.
- 48.2 **Output 25 (Street Cleaning Services): The Service Provider plans and delivers the Street Cleaning Services to meet the Authorities' performance and monitoring standards.**
- 48.3 The Service Provider shall:
 - 48.3.1 plan and implement the Street Cleaning Services to achieve and maintain the Cleaning Performance Standards;
 - 48.3.2 plan and deliver the Street Cleaning Services to maximise the recycling of street cleaning waste (**Street Cleaning Waste**), particularly as part of litter picking activities;
 - 48.3.3 develop the cleaning techniques and methods to be deployed in the delivery of the Street Cleaning Services. The Authorised Officer shall have the right to approve the cleaning techniques and methods;
 - 48.3.4 deliver the Street Cleaning Waste to the Delivery Sites;
 - 48.3.5 keep all specified areas in the scope of the Contract in the Authorities' Area clean and free of litter, refuse and detritus to deliver the Cleaning Performance Standards; and

- 48.3.6 clean all Street Cleaning Areas to the Grade A standard as set out in the Code of Practice on Litter and Refuse (2006) (**Cleaning Performance Standards**). Ensure that the Street Cleaning Services are undertaken as may be necessary to maintain an overall cleaning standard of not less than Grade B. The Authorities recognise that cleaning of litter (to Grade A) and detritus (to Grade A) may be undertaken separately and at different frequencies in order to meet and maintain the Cleaning Performance Standards.
- 48.4 The Service Provider and the Authorities shall adopt accurate and systematic monitoring of the Street Cleaning Services through the deployment of adequate monitoring resources. If the Service Provider or the Authorised Officer identifies that cleanliness has fallen below the required Cleaning Performance Standard, the Service Provider shall clean and restore the Street Cleaning Area to Grade A within the specified Rectification Period for that area's Priority Zone, as outlined in Table 2.

Table 2: Rectification Period for Priority Zones

Priority Zone	Response Time to restore to Grade A (Litter)		Response Time to restore to Grade A (Detritus)	
	Threshold = B-	Threshold = C	Threshold = B-	Threshold = C
Town Centres and Local Shopping Areas	2 hrs	2 hrs	2 hrs	2 hrs
High Visibility Through Routes and Low Usage Village Centres	6 hrs	3 hrs	6 hrs	6 hrs
Main Through Routes, Spine Roads and High Need Residential	12 hrs	4 hrs	12 hrs	8 hrs
General Residential	12 hrs	6 hrs	18 hrs	12 hrs
Low Use Rural	3 days	8 hrs	5 days	3 days

- 48.5 The Service Provider shall be required to provide the necessary traffic management arrangements to enable mechanical channel sweeping of the nearside of the carriageway as well as to enable litter picking of the adjacent verge to the nearside of the carriageway and, where required, footway sweeping. When cleaning dual carriageways, the Service Provider shall clean the central reservation in accordance

with the traffic management arrangements required by the Highway Authority, Highways Agency or Department for Transport.

- 48.6 When cleaning heavily parked roads, the Service Provider shall provide the necessary traffic management arrangements to enable regular mechanical channel sweeping of the nearside of the carriageway as well as to enable litter picking of the adjacent verge to the nearside of the carriageway and, where required, footway sweeping.
- 48.7 The Service Provider shall put in place appropriate measures to ensure that litter bins are emptied before reaching 75% capacity. The response times listed in Table 3 shall apply when a litter bin reaches more than 75% capacity:

Table 3 Rectification Period for emptying Litter Bins that are full to over 75% capacity:

Priority Zone	Response Time to empty Litter Bins that are full to over 75% capacity.
Town Centres and Local Shopping Areas Priority Zone	2 hrs
High Visibility Through Routes and Low Usage Village Centres Priority Zone	6 hrs
Main Through Routes, Spine Roads and High Need Residential Priority Zone	By end of next Working Day
General Residential Priority Zone	By end of next Working Day
Low Use Rural Priority Zone	By end of next Working Day

- 48.8 In addition to the general cleaning requirements, the following service requirements shall apply to the Street Cleaning Services.

49 CLEARANCE OF LEAF/BLOSSOM

- 49.1 The Service Provider shall remove leaf and blossom fall from the Street Cleaning Areas to the same standards and at the same frequency as other litter and detritus. During periods of leaf/blossom fall the Service Provider may need to increase the frequency of the Street Cleaning Services in affected Street Cleaning Areas in order to maintain the Cleaning Performance Standards. The Service Provider shall clean, on instruction by the Authorised Officer, streets or parts of streets that are either reported, or identified, as being affected by potentially hazardous leaf fall.

50 ENHANCED CLEANING

- 50.1 The Authorised Officer may instruct the Service Provider to carry out further cleaning and other tasks in prescribed Street Cleaning Areas to supplement the street cleaning activities and to exceed the Cleaning Performance Standards, predominantly in town centres and shopping areas.

51 REMOVAL OF DEAD ANIMALS

- 51.1 The Service Provider shall remove dead animals from the Adopted Highway within 3 Working Hours of discovery or notification and shall dispose of such dead animals at a site or sites specified by the Authorised Officer.
- 51.2 If the dead animal is a dead domestic pet, such as a dog or cat, the Service Provider shall check the dead animal for any identification including scanning it for a microchip implant and report the incident to the Authorised Officer through the Information Technology System. The Service Provider shall remove the dead pet to a cold store provided for this purpose by the Service Provider for a minimum period of 15 Working Days to enable the pet owner to retrieve the pet. If after 15 Working Days, there is no prospect of the pet owner retrieving the pet, the Service Provider shall dispose of the dead pet.

52 PAVEMENT WASHING AND PEDESTRIAN SUBWAYS

- 52.1 The Authorised Officer may instruct the Service Provider to mechanically wash and remove chewing gum from paved areas and pedestrian subways.

53 EVENTS CLEANING

- 53.1 When markets (whether regular markets or occasional) or approved special events (e.g. street parties, cycle races, Remembrance Sunday) are held in a specified road or parts of a road, the Service Provider shall programme Street Cleaning Services for that day for the area occupied or directly affected by the market or approved special event and shall clean the area affected in accordance with its corresponding Cleaning Performance Standard within two Working Hours of the closure of the market or approved special event.
- 53.2 The Authorised Officer may instruct the Service Provider to provide extra cleaning resources and assist the event organisers. This may also include the provision of waste and recycling Containers for the event users.

54 INSTALLATION, EMPTYING, CLEANING AND REMOVAL OF STREET LITTER BINS, BRING SITE CONTAINERS AND DOG WASTE BINS

- 54.1 The Service Provider shall as part of the Street Cleaning Services:
- 54.1.1 empty and clean litter and dual recycling litter bins, bring site containers and dog waste bins, as necessary, in order to ensure that no bin is ever more than 75% full;

- 54.1.2 ensure that the exterior of litter bins, bring site containers and dual recycling litter bins remains clean and free of dirt, other markings and spillages; and
- 54.1.3 clean each dog waste bin on a regular cycle to ensure that the appearance of the bin is acceptable and in a hygienic and clean condition;
- 54.2 When emptying a bin, the Service Provider shall:
 - 54.2.1 remove any litter within a 2 metre radius of the bin;
 - 54.2.2 where applicable to that type of bin being emptied, provide and line the bin with a replacement sack or bin liner, and ensure the bin is securely closed and locked;
 - 54.2.3 ensure that the compartments of the dual recycling litter bins are collected separately and that the recycling fraction is sent for recycling; and
 - 54.2.4 empty and wipe clean any ash trays on bins and other street furniture.
- 54.3 As part of the Street Cleaning Services, the Service Provider shall ensure that each bin is thoroughly cleaned inside and out, using water and an approved cleaning agent, not less than twice a year at an interval of no more than seven months between each cleaning. The Service Provider shall ensure, when carrying out such washing, that any drainage holes in the bins and associated liners are clear and free running.
- 54.4 The Authorised Officer may instruct the Service Provider to:
 - 54.4.1 install and service new, replacement or additional litter, dual recycling litter bins, bring site containers and dog waste bins, or replace parts, and the Service Provider shall provide a stock of bins and parts for this purpose; or
 - 54.4.2 remove a litter or dual recycling litter bin or dog waste bin and return it to stock.

55 CLEARANCE OF FLY TIPPED WASTE

- 55.1 The Service Provider shall as part of the Street Cleaning Services remove within 1 Working Day from any part of an Adopted Highway or associated land covered by the Contract:
 - 55.1.1 any accumulation of waste up to and including 2.5 cubic metres in volume; subject to paragraph 55.1.3, any item or items of fly tipping or unwanted items of furniture and other household items of any size;
 - 55.1.2 transport and deliver accumulated waste and fly-tipped or unwanted items to the Delivery Site(s) for re-use, recycling or disposal; and

- 55.1.3 if the Service Provider identifies accumulations of waste larger than 2.5 cubic metres in volume or that the removal of any item of fly tipping or unwanted items of furniture or other household items requires mechanical handling, then the Service Provider shall obtain the instructions of the Authorised Officer prior to removing, transporting and delivering the waste to a Delivery Site for re-use, recycling or disposal; if the Service Provider identifies asbestos or any other material requiring specialist disposal under current legislation the Service Provider shall obtain the instructions of the Authorised Officer prior to removing, transporting and disposing of the waste at the Service Provider's own cost taking all necessary safety precautions.
- 55.2 Prior to its removal the Service Provider shall photograph all fly-tipped waste and search through the fly-tipped material for any indication of the origin of the waste to support the Authorities' enforcement functions. The Service Provider shall record and report details of the incident to the Authorised Officer through the Information Technology System, such details to include photographic and other evidence, including the location and the type of waste categorised as per waste types input into 'Flycapture', the national web-based fly-tipping database, managed by the Environment Agency on behalf of the Department for the Environment, Food and Rural Affairs (DEFRA).

56 CLEANING OF PRECINCTS AND SURFACE CAR PARKS

- 56.1 For those precincts and car parks included in the Street Cleaning Areas, the Service Provider shall as part of the Street Cleaning Services clean each precinct and car park in accordance with the Cleaning Performance Standard which corresponds with:
- 56.1.1 that precinct's or car park's specific assigned Priority Zone; or
- 56.1.2 where the precinct or car park has not been assigned a specific Priority Zone, the Priority Zone of the street by which the car park is entered.
- 56.2 The Service Provider shall open, close and lock gates and barriers as part of the Street Cleaning Services and ensure that the Service Provider's Personnel has the appropriate keys and equipment to facilitate this work.

57 REMOVAL OF GRAFFITI AND FLY POSTING

- 57.1 The Service Provider shall as part of the Street Cleaning Services:
- 57.1.1 remove fly-posting, stickers or other defacing materials; and
- 57.1.2 remove or cover graffiti. This shall include, but is not limited to, publicly owned buildings, highway surfaces, car parks, street furniture, walls and fences.
- 57.1.3 The removal shall take place as discovered by the Service Provider or notified to it, within the following timeframe:
- (a) fly-posting, stickers and other defacing materials: 3 Working Days;
 - (b) graffiti: 3 Working Days; and

- (c) offensive graffiti, fly posting, stickers or other defacing materials: 4 Working Hours.

- 57.2 The Service Provider shall record and report details of the incident (including its location and photographic evidence) to the Authorised Officer through the Information Technology System. If the flyposting has identifiable contact information, photographic evidence of this, and where practicable, the fly posting material, shall be provided to the Authorised Officer to support the Authorities' enforcement functions. If requested by the Authorised Officer the Service Provider shall delay removal of graffiti to allow evidence collection to take place.
- 57.3 The Authorised Officer may instruct the Service Provider to remove graffiti from privately owned property following a request by the property owner to the Authorised Officer.

58 CLEANING OF ITEMS OF STREET FURNITURE AND SIGNAGE

- 58.1 The Service Provider shall as part of the Street Cleaning Services clean items of street furniture and signage, including but not limited to seating, nameplates (but excluding road/traffic signs) and handrails so that the street furniture and signage is kept clean and free of debris and stains.

59 REMOVAL AND MANAGEMENT OF HIGHWAY WEEDS (PROVISIONAL)

The provision of this service is subject to agreement with Surrey County Council as the highway authority in the Authorities' Area.

- 59.1 The Service Provider shall as part of the Street Cleaning Services manage (to include the removal of) weeds from all highways surfaces (including refuges, central reservations, lay-bys and car parks) within the Street Cleaning Areas using an approved herbicide.
- 59.2 The Service Provider's methods shall provide effective control of weeds through minimising re-growth, minimising the potential for plant reproduction and destroying root systems. The Service Provider shall ensure that any application of herbicide is carried out in such a way as to minimise the risk of contamination of the surface water and drainage system. The Service Provider's use of herbicide must be in compliance with the manufacturer's label recommendations, relevant legislation and COSHH regulations.
- 59.3 The primary growing season shall be anticipated to fall between March and November. This is dependent on local climatic conditions and may be extended or reduced as agreed with the Authorised Officer.
- 59.4 The control of weed growth shall be divided into 2 categories: Highway Hard Surface Weeds and Injurious and Noxious Weeds.
- 59.5 **HIGHWAY HARD SURFACE WEEDS (PROVISIONAL)**

- 59.5.1 The Service Provider shall apply a hazard free formulation of a translocated, non-residual herbicide (glyphosate or equivalent) with prior approval of the Authorised Officer. This should be applied on a minimum of 2 occasions, at optimum periods each year, at the locations identified by the Authorised Officer.
- 59.5.2 The Service Provider shall apply the above method to adopted footways as requested by the Authorised Officer.
- 59.5.3 The Service Provider's application of the herbicide shall provide effective control of weed growth on all kerbs, channels, traffic islands, footways and solid backlines. The Service Provider shall take care not to spray on cultivated or grassed areas.
- 59.6 INJURIOUS AND NOXIOUS WEEDS (PROVISIONAL)**
- 59.6.1 The Service Provider shall treat and/or remove injurious or noxious weeds, (primarily Ragwort, Japanese Knotweed and Giant Hogweed) on the highway in the schedules provided by the Authorised Officer as required. The control measures used shall be appropriate to the species and applied at optimum periods each year, in accordance with current best practice or the instruction/agreement of the Authorised Officer. The Ragwort Control Act 2003 and associated Code of Practice shall be followed.
- 59.7 ADDITIONAL WEED CONTROL (PROVISIONAL)**
- 59.7.1 The Authorised Officer may instruct the Service Provider to undertake additional weed control and the associated Unit Rate in the Annual Sums Items in the Pricing Schedule shall apply.



Schedule 2 Pricing Schedule

Schedule 3 Performance regime

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

Administrative Labour Cost: the all-in cost of the estimated time required by an officer of the Authorities (or any one of them) to resolve (or facilitate or track and report the resolution of) any Service Failure, being £25/hour as at the date of this agreement, and subject to indexation in accordance with the average 'cost of living' pay awards awarded to Authorities' officers with effect from 1 April in each Contract Year thereafter.

Assisted Collections: those collections where the Service Provider is required to collect the contents of, and return, one or more Container(s) from an Agreed Collection Point instead of the standard Collection Point due to the Authorities considering the respective householder to be physically unable to present one or more Container(s) at the standard Collection Point.

Consistent Failure: is:

- (a) the level of performance in respect of KPI1 (Missed Collection) equalling or exceeding 3 times the Target KPI either (i) 3 times in 3 consecutive months or (ii) 5 times in any 12 month period; and/or
- (b) the Authorities serving 12 Remediation Notices in accordance with paragraph 4.2 (**Street Cleaning**) of this Schedule 3; and/or
- (c) the Service Provider being liable to pay an amount equal to the annual anticipated Service Provider Profit Margin (as defined in Schedule 8) x one quarter of the then applicable non-variable Annual Contract Value (**Threshold Amount**) to the Authorities in Performance Deductions over three consecutive months save that in determining whether the Threshold Amount has been reached, liability for those Performance Deductions arising during the applicable Mobilisation Period for that Authority Area as a direct result of mobilisation of the Services shall be excluded from the calculation.

Container: any bin or sack or container designated for a particular material.

Customer Contact Services Response Times Not Met: enquiries not responded to within the Authorities' target response timescales as set out in paragraph 10.8 of the Specification.

Detritus Standard: the Service Provider is required to maintain each of the Authority Areas at a level of 8% of unacceptable transects or less in respect of detritus, save that in respect of the six month period following a Service Commencement Date, the level of unacceptable transects in the mobilising Authority Area (but not in any other Authority Area) shall be 12% in respect of the first three months, reducing to 10% for the subsequent three months.

Failure to Carry Out Collection as Specified (Assisted Collection): any reported failure by the Service Provider to comply with paragraph 33 of the Specification.

Failure to Carry Out Collection as Specified (Non-Assisted Collection): any reported failure by the Service Provider to comply with paragraph 33 of the Specification.

Flytipping, Flyposting or Graffiti Non Removal: each reported failure to remove each fly tipping, fly posting or graffiti within the time specified in Schedule 1 (Specification).

Garden Waste Cancellation (Missed Collections): Garden Waste subscription cancelled due to Repeat Missed Collections.

Litter and Detritus Survey (LADS): has the meaning given to it in paragraph 5 of this Schedule.

Litter Standard: the Service Provider is required to maintain each of the Authority Areas at a level of 4% of unacceptable transects or less in respect of litter, save that in respect of the six month period following a Service Commencement Date, the level of unacceptable transects in the mobilising Authority Area (but not in any other Authority Area) shall be 5%.

Missed Assisted Collection: any scheduled Assisted Collection not made by the Service Provider when the relevant Collection Vehicle passes the relevant household or other relevant premises and where the Service User had correctly presented the correct Container(s).

Missed Bulky Waste Collection: any scheduled collection of Bulky Waste not made by the Service Provider.

Missed Collection: any scheduled collection of the contents of one or more Container (other than an Assisted Collection or a Bulky Waste collection) not made by the Service Provider when the relevant Collection Vehicle passes the relevant household or other relevant premises and where the Service User had correctly presented the correct Container(s).

Missed Collection Not Rectified: a Missed Collection which is (i) reported by midday and is not rectified by 18:00 that same day; or (ii) reported after midday and is not rectified by midday on the following Working Day.

Mobilisation Period: in respect of the street cleaning Service, the six month period commencing on the applicable Service Commencement Date for an Authority and in respect of the waste collection Service, the three month period commencing on either (i) the applicable Service Commencement Date for an Authority.

Repeat Missed Collection: any Missed Collection that relates to a household or other relevant premises (as the case may be) to which a Missed Collection also occurred more than once in any eight week period or more than three times in any fifty-two week period.

Repeat Missed Assisted Collection: any Missed Assisted Collection that relates to a household to which a Missed Assisted Collection also occurred more than once in any eight week period or more than three times in any fifty-two week period.

Repeat Missed Collection Not Rectified: any Repeat Missed Collection which is (i) reported by midday and is not rectified by 18:00 that same day; or (ii) reported after midday and is not rectified by midday on the following Working Day.

Reported Spillage: each reported breach of:

- (a) paragraph 35.2 of the Specification (Litter and Spillages); or
- (b) paragraph 54 of the Specification (Installation etc. of Street Litter Bins, Bring Site Containers and Dog Waste Bins).

Reported Waste Separation Failure: each reported failure by the Service Provider or the Service Provider's Personnel to keep segregated at the point of collection and thereafter up to the point of delivery at the Delivery Sites correctly presented Dry Recycling, Other Recycling Materials, Food Waste, Garden Waste and/or Residual Waste. For the avoidance of doubt, the Service Provider shall comply with paragraph 39 of the Specification (Contrary Materials) but is otherwise not responsible for the Service Users' failure to correctly segregate waste.

Street Cleaning Performance Failure Not Rectified: any failure to comply with the applicable rectification period set out in Table two at paragraph 48.4 of the Specification and Table three at paragraph 48.7 of the Specification.

Target KPI: those targets listed in the table at paragraph 2.7 and paragraph 4 of this Schedule.

2. THE KPIS

- 2.1 Subject to paragraph 8, the KPIS which the parties have agreed shall be used to measure the performance of the Services by the Service Provider are contained in the table set out at paragraph 2.7 below.
- 2.2 The Performance Management Report provided by the Service Provider in accordance with paragraph 3.2 of Schedule 9 shall record each Achieved KPI and each KPI failure and shall set out the total Performance Deductions to be deducted from the Charges in respect of the period covered by the Performance Management Report, supported by a breakdown of the Performance Deductions by KPI.
- 2.3 The Performance Deductions set out in the Performance Management Report shall be included as a deduction against the Charges in the monthly invoice generated by the Service Provider in accordance with the provisions of clause

39.4. The Service Provider shall not be entitled to any increase in the Charges by exceeding the Target KPIs.

2.4 Performance Deductions shall arise in respect of each KPI failure and are a reduction of the Charges payable in respect of the relevant Services to reflect the loss of resources available to the Authorities, expressed as a unit or part unit of Administrative Labour Cost as set out in the table at paragraph 2.7 below. For the avoidance of doubt, the use of the Administrative Labour Cost to calculate Performance Deductions shall apply even where resources are supplied by the Service Provider as part of a service user contact management service provided under this agreement to one or more of the Authorities.

2.5 In respect of KPI7 (Reported Waste Separation Failure), the Performance Deduction shall be the aggregate of:

- (a) the applicable unit or part unit of Administrative Labour Cost Deduction specified in the table at paragraph 2.7 below;
- (b) the actual costs of disposal incurred at the time by the Authorities in dealing with the contaminated waste, which equal £130/tonne as at the date of this agreement but which may be recalculated by the Authorities from time to time; plus
- (c) the loss of income suffered by the Authorities as a result of the contamination of the waste.

2.6 In respect of KPI10 (Missed Bulky Waste Collection), the Performance Deduction shall be the aggregate of:

- (a) the applicable unit or part unit of Administrative Labour Cost Deduction specified in the table at paragraph 2.7 below; and
- (b) where Authorities are collecting payments directly from the Service User, the loss of income suffered by the Authorities calculated as the amount of any refund given to the Service User.

2.7

No.	KPI Title	Target KPI	Unit of Administrative Labour Cost Deduction
KPI1	Missed Collection	Missed Collections from Households in any one Authority Area shall not exceed 80/100,000 Scheduled Collections from Households in any one month	0.5 hours of Administrative Labour Cost in respect of each Missed Collection

KPI2	Missed Assisted Collection	Zero incidences in any one month	1 hour of Administrative Labour Cost
KPI3	Missed Collection Not Rectified	Zero incidences in any one month	1 hour of Administrative Labour Cost
KPI4	Repeat Missed Collection	Zero incidences in any one month	1 hour of Administrative Labour Cost in respect of each instance of a Repeat Missed Collection. For example, where a Repeat Missed Collection has occurred three times in any eight week period, the deduction shall be 3 hours of Administrative Labour Cost.
KPI5	Repeat Missed Assisted Collection	Zero incidences in any one month	1 hour of Administrative Labour Cost in respect of each instance of a Repeat Missed Assisted Collection. For example, where a Repeat Missed Assisted Collection has occurred three times in any eight week period, the deduction shall be 3 hours of Administrative Labour Cost.
KPI6	Reported Spillage	Zero incidences in any one month	0.5 hour of Administrative Labour Cost

KPI7	Reported Waste Separation Failure	Zero incidences in any one month	4 hours of Administrative Labour Cost
KPI8	Failure to Carry out Collection as specified (Assisted Collection)	Zero incidences in any one month	1 hour of Administrative Labour Cost in respect of each instance.
KPI9	Failure to Carry out Collection as specified (Non-Assisted Collection)	Five incidences in any one month	0.5 hour of Administrative Labour Cost in respect of each instance.
KPI10	Missed Bulky Waste Collection	Zero incidences in any one month	1 hour of Administrative Labour Cost
KPI11	Street Cleaning Performance Failure Not Rectified	Zero incidences in any one month	0.5 hour of Administrative Labour Cost
KPI12	Flytipping, Flyposting or Graffiti Non Removal	Zero incidences in any one month	0.5 hour of Administrative Labour Cost
KPI13	Customer Contact Services Response Times Not Met	Zero incidences in any one month	0.5 hour of Administrative Labour Cost
KPI14	Garden Waste Cancellation (Missed Collections)	Zero incidences in any one month	3 hours of Administrative Labour Cost

3. SATISFACTION SURVEYS

3.1 In order to assess the level of performance of the Service Provider, the Authorities may undertake satisfaction surveys in respect of Service Users or various groups of Service Users (each such survey a "Satisfaction Survey"), the results of which may be reflected in the Service Report (as defined in Schedule 9). The subject matter of Satisfaction Surveys may include:

- (a) the assessment of the Service Provider's performance by the Service Users against the Target KPIs; and/or
- (b) other suggestions for improvements to the Services.

- 3.2 The Authorities shall require the Service Provider to reflect in the Service Report any aspects of the Service Provider's performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Specification.

4. STREET CLEANING

- 4.1 The Service Provider is required to deliver the Services so as to achieve the Detritus Standard and the Litter Standard. If the Service Provider is determined by the Authorities to have failed to achieve the Detritus Standard and/or the Litter Standard in any quarter in any Authority Area following a Litter and Detritus Survey (**LADS**):

- (a) the Service Provider shall pay to the Authorities a sum calculated on the basis of £6,000 (as adjusted upwards in accordance with paragraph 10 of Schedule 7 (Charges and Payment) to reflect the effects of inflation) for every whole 1% in respect of which the actual levels of detritus and litter are in excess of the percentage figures stipulated in the Detritus Standard and the Litter Standard respectively;
- (b) the Authorities shall issue a Remediation Notice in respect of such a failure to achieve the Detritus Standard in each separate Authority Area; and
- (c) the Authorities shall issue a Remediation Notice in respect of such a failure to achieve the Litter Standard in each separate Authority Area.

- 4.2 If the Service Provider has been served with 12 Remediation Notices pursuant to paragraph 4.1 in respect of either or both the Detritus Standard and/or the Litter Standard this shall constitute a Consistent Failure.

5. LITTER AND DETRITUS SURVEYS

- 5.1 The Authorities will undertake quarterly Litter and Detritus Surveys (**LADS**) for each Authority Area in accordance with the agreed methodology based on the former NI195 National Performance Indicator in relation to methods and statistical sampling; however in place of 'land use types' the Authorities will survey based on the Authorities' categorisation of land into Priority Zones and by reference to the relative proportion each Priority Zone bears in relation to the total land to be cleaned in each Authority Area. The Authorities encourage the Service Provider to participate in the LADS with the Authorities; however the Authorities are not obliged to undertake such LADS jointly with the Service Provider, and the results of LADS undertaken by the Authorities in the absence of the Service Provider shall be valid.

5.2 For the purposes of determining whether or not the Detritus Standard and the Litter Standard have been achieved, the LADS result for each quarter will be calculated on a look-back basis.

5.3 No later than 10 Working Days prior to the applicable Service Commencement Date of the street cleaning Services in an Authority Area, the Authorities and the Service Provider shall undertake a LADS in accordance with paragraphs 5.1 and 5.2. If the results of the LADS evidence that detritus in that Authority Area is at a level of 15% of unacceptable transects, or that litter in that Authority Area is at a level of 7% of unacceptable transects, or both, the Service Provider shall present to the Contract Partnering Board the results of the LADS together with a recovery plan setting out the timescales and approach by which the Service Provider proposes to achieve the applicable Detritus Standard and/or Litter Standard. Prior to presentation to the Contract Partnering Board, such recovery plan shall have been jointly agreed between the Authorised Officer and the Service Provider's Representative.

6. REMEDIATION NOTICES

6.1 In respect of any other non-rectifiable failure to comply with the Specification where such failure is not the subject of the Performance Deductions calculated in accordance with paragraphs 2 or 4 of this Schedule and such non-rectifiable failure has in the opinion of the Authorised Officer had a detrimental effect on the quality of the Service, the Authorities may serve a Remediation Notice on the Service Provider.

6.2 For each Remediation Notice served on the Service Provider by the Authorities in accordance with paragraph 6.1 of this Schedule, the Service Provider shall apply a deduction against the Charges of £100 as at the date of this agreement.

6.3 For each Remediation Notice served on the Service Provider by the Authorities in accordance with clause 69.1(a) above, the Service Provider shall apply a deduction against the Charges of £100/day as at the date of this agreement for the day from and including the date on which the Remediation Notice is issued until and excluding the date on which the Authorised Officer certifies to the Service Provider that the breach has been remedied in accordance with the Remediation Notice.

6.4 The deductions applied in accordance with this clause shall be:

- (d) reported to the Authorities in the Performance Management Report and the breach giving rise to the Remediation Notice shall be reported in the Service Report; and
- (e) included in the monthly invoice generated by the Service Provider in accordance with the provisions of clause 39.4.

6.5 The deduction set out in paragraph 6.2 and 6.3 will be adjusted upwards in accordance with paragraph 10 of Schedule 7 (Charges and Payment) to reflect the effects of inflation.

7. NON-EXCLUSIVE REMEDY

7.1 The Performance Deductions set out in this Schedule shall be the exclusive financial remedy for the Authorities for each KPI failure for which a Target KPI has been set, unless

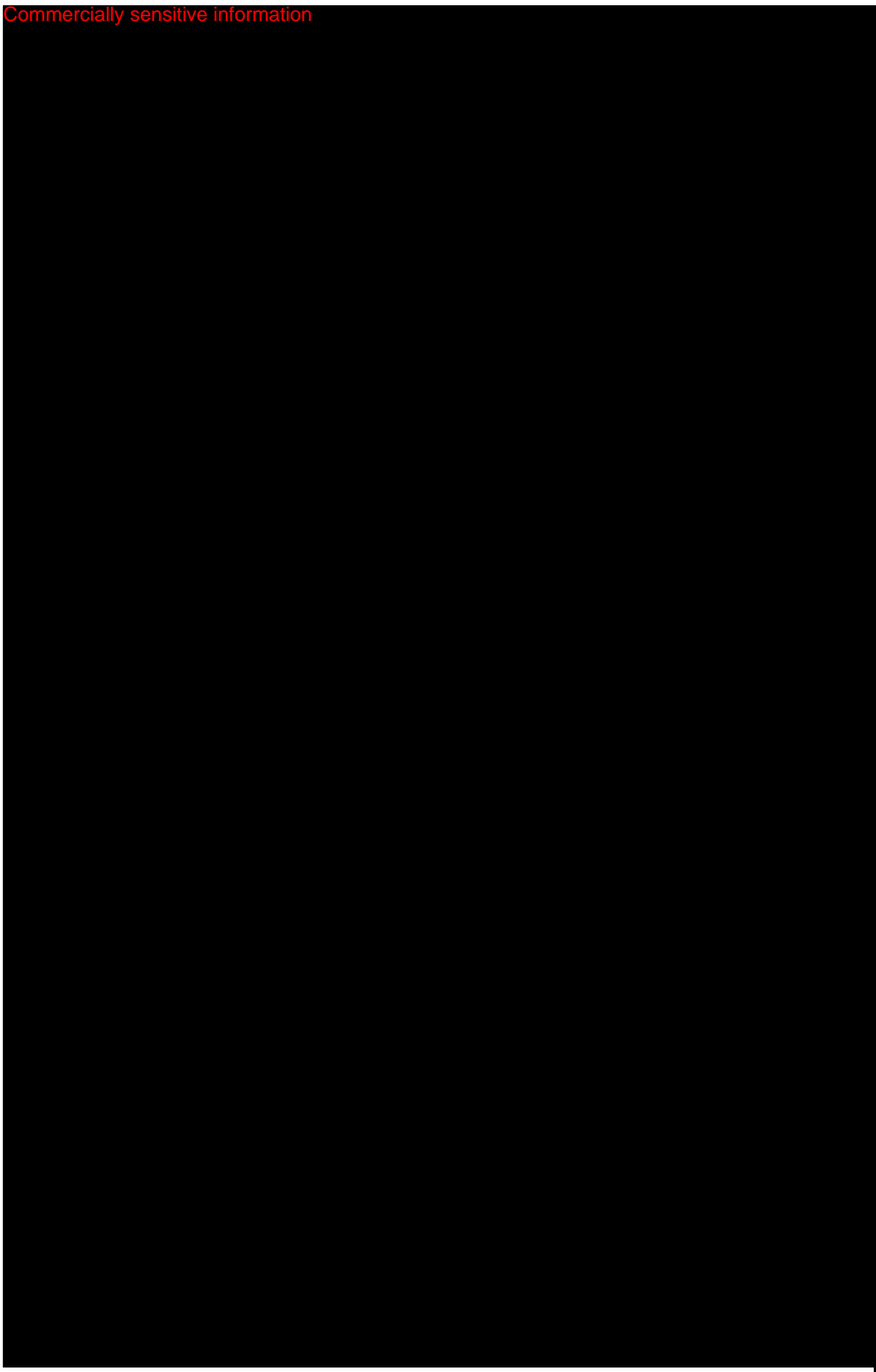
- (a) the Authorities are otherwise entitled to terminate this agreement for the Service Provider's Consistent Failure or failure to remedy in accordance with a Remediation Notice; or
- (b) the failure to perform the Services in accordance with the KPIs (either on an individual basis or in aggregate) has arisen due to theft, gross negligence, fraud, fraudulent misrepresentation or wilful default;

in which case the Authorities may obtain such other remedies as may be available to it (including damages), either under this agreement or otherwise at law or in equity, including the right to terminate this agreement in accordance with clause 69 (Termination for Breach).

8. MOBILISATION

Commercially sensitive information





9. CHANGE CONTROL – STREET CLEANING

- 9.1 The provisions of paragraph 4 are on the basis that there are three Authorities receiving street cleaning Services from the Service Provider. The Performance Deduction in paragraph 4.1(a) above reflects the difference in value between the level of resources paid for under this agreement to achieve the Specification and the level of resources actually delivered to the three Authorities. The reference to '12 Remediation Notices' in paragraph 4.2 qualifying as 'Consistent Failure' is on the basis that a Remediation Notice is issued in respect of Litter and in respect of Detritus in each of the three Authority Areas, which equals six Remediation Notices in respect of one quarter and twelve Remediation Notices in respect of two quarters.
- 9.2 If another Authority (be it WBC or another Partner Organisation) wishes to receive street cleaning Services from the Service Provider, then for each additional Authority, the then applicable number of Remediation Notices in paragraph 4.2 shall each be increased by an additional four notices and the definition of Consistent Failure limb (b) shall be updated accordingly. In the alternative, if the number of participating authorities decreases, the applicable number of Remediation Notices in paragraph 4.2 shall decrease by four notices

and the definition of Consistent Failure limb (b) shall be updated accordingly.
The table below illustrates this.

Number of Authorities receiving Street Cleaning Services	Applicable number of Remediation Notices for the purposes of paragraph 4.2 and limb (b) of the definition of Consistent Failure in paragraph 1.1
One Authority	4 Remediation Notices
Two Authorities	8 Remediation Notices
Three Authorities	12 Remediation Notices
Four Authorities	16 Remediation Notices
For each additional Authority	An additional 4 Remediation Notices for each additional Authority.