



Council of the Isles of Scilly

## INVITATION TO TENDER

**4- Year (+1) Waste Haulage Services for Waste & Recycling between St Mary's, Isles of Scilly and Penzance, Cornwall.**

*Collection of waste and recycling from St Marys Waste Management Site and haulage to freight vessel at St Marys Quay, Marine haulage from St Marys Quay to Penzance port and management of transfer to Waste Collection Vehicle (and the return of empty waste containers).*

**CIOS Contract Notice Reference Number: CIOs220914**

**DATE OF ISSUE: 21<sup>st</sup> September 2022**

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### **Contract Opportunity Summary**

<b>Contract Name:</b>	4-year (+1 year) Waste Haulage Services for Waste & Recycling between St Mary's, Isles of Scilly and Penzance, Cornwall	<b>Date of Contract Notice sent/ITT Available</b>	21/09/2022
<b>Our Contract Ref:</b>	CloS220914	<b>Clarifications Period</b>	30/09/2022
<b>Contract Type:</b>	Services	<b>Tender Return Date/Time</b>  <b>Tender Opening</b>	24/10/2022 16:00  25/10/2022 09:00
<b>CPV Codes:</b>	90512000	<b>Evaluation Period</b>	25/10/2022 – 31/10/2022
<b>Place of Delivery:</b>	Isles of Scilly to Penzance	<b>Date of Notification</b>	01/11/2022
<b>Estimated Contract Value:</b>	£615,000	<b>Standstill Period</b>	02/11/2022 – 16/11/2022
<b>Tender Type:</b>	Open Procedure  Most Economically Advantageous Tender (Price/Quality)	<b>Earliest Date Contract Awarded</b>	17/11/2022
<b>Tender Response Requirement</b>	Quality response D1 – D4  Price Response  Appendix A – Qualitative Selection Document	<b>Anticipated Contract Commencement:</b>	18/11/2022
<b>Quality/Price Ratio:</b>	Quality 40%  Price 60%	<b>Anticipated Contract Completion</b>	17/11/2026 (2027+ Option for 1 year extension)

## Section A: Introduction

- A.1 The Council of the Isles of Scilly is looking for a Provider or Providers to be appointed for the supply of the waste haulage services, as specified in the Council's Contract Notice Reference Number: **CloS220914**
- A.2 This is an above threshold level services contract being procured under the Open Procedure.
- A.3 Section B provides some Background to the Contracting Authority and the Isles of Scilly.
- A.4 Section C contains the Instructions to Tenderers and sets out the conditions of this ITT.
- A.5 Section D provides details on the required response format and explains the evaluation process.
- A.6 Section E contains the Scope of Services.
- A.7 Prior to commencing formal evaluation, Tender Responses will be checked to ensure they are fully compliant with the conditions of Tender. Non-compliant Tender Responses may be rejected by the Authority. Tender Responses which are deemed by the Authority to be fully compliant will proceed to evaluation. These will be evaluated using the award criteria and weightings detailed in Section D, Clause D1 to D5.
- A.8 Following evaluation of the Tenders the Authority will undertake all necessary due diligence checks, including those relating to the successful providers response to Appendix A: Qualitative Selection Document, and, subject to the due diligence checks, will award a contract to the successful provider. Where checks on the qualitative selection document make the initial successful provider non-compliant their submission will be de-selected and the next highest scoring tender will become the successful provider

## Section B: Background

### Geographical Location

The Council of the Isles of Scilly is unique in terms of its geographical location, its constitution, history and community and the broad range of services that it delivers.

Situated 28 nautical miles southwest of Lands-End, Cornwall, the Isles of Scilly consists of 5 inhabited islands, with an approximate total population of 2,203 (2011 census). The majority of residents live on St Mary's, the biggest of the islands, with resident populations on 4 of the off-islands of St Agnes, Bryher, Tresco and St Martin's.

The exceptional quality of the islands environment reflects its designation as an Area of Outstanding Natural Beauty (AONB), Conservation Area and Heritage Coast. The Conservation Area and the AONB boundaries are coincidental and cover the entire archipelago.

The economy of the islands is dominated by tourism and agriculture which leads to seasonal fluctuations in both population and waste and recycling production.

### The Council of the Isles of Scilly

The Council of the Isles of Scilly is the most southwest unitary local government authority in the UK. Employing approximately 200 members of staff and delivering a wide array of services across the islands including adult and children's social care, waste management, highways and operational services, housing and environmental health, planning and development, registration of births, marriages and deaths, coastal-defences, sea fisheries, health and safety and emergency planning.

The Council also operates St Mary's Airport, central to the local economy and the 10th busiest regional passenger airport in the United Kingdom.

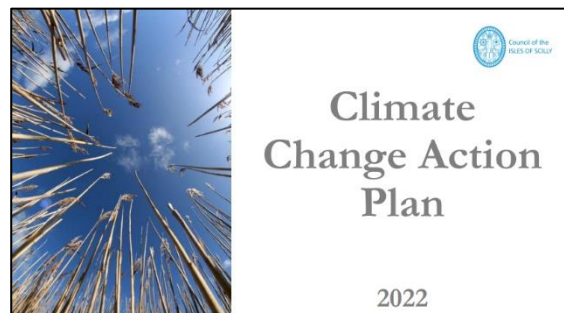
### Climate Change & Carbon Reduction

The Council's Corporate Plan 2019-2023 sets out the Council of the Isles of Scilly's ambitions in relation to climate change, carbon reduction and waste management. In April 2019 the Council declared a Climate Emergency, committing to become a net zero carbon organisation by 2030.

As a result of the declaration, the Council adopted its first [Climate Change Action Plan in March 2022](#), setting out how it intends to achieve this ambitious target through the delivery of ten key objectives covering energy, waste, water, transport and procurement.

One

A significant element of the Climate Change Action Plan is to work with contractors and suppliers to ensure the Council's Scope 3 carbon emissions are managed and reduced in line our targets. This includes the Waste Haulage Contract and the Council expects the successful contractor to have carbon reduction practices in place as part of the delivery of this contract.



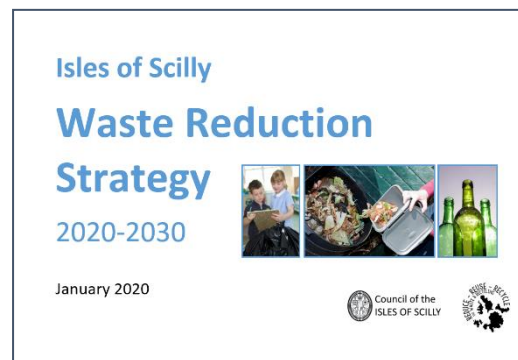
This contract requires the successful tenderer to report their annual carbon emissions for the delivery of this contract to the Council of the Isles of Scilly to be included within their Scope 3 emissions reporting.

### **Waste Reduction Strategy**

[The Waste Reduction Strategy \(2020-2030\)](#) sets out the Council's plans to both support the delivery of the Council's carbon neutral agenda, but also to meet the Government's requirements laid out in the Resource and Waste Strategy.

The Waste Reduction Strategy commits to working with residents, businesses and organisations to:

- Reduce the overall volume of waste across the islands by 15% by 2025 and then by 25% by 2030
- Increase the amount of material that is reused
- Increase the amount of waste that is recycled or composted
- Improve communications with householders, visitors and businesses regarding waste and recycling collection services
- Deliver initiatives that support waste reduction, re-use, recycling and composting.
- Provide safe, efficient, cost effective and reliable services which meet the needs of the community
- Provide services that keep the environment and public realm attractive, clean and litter free.



Alongside the Waste Reduction Strategy, and with the increasing requirement for Councils to 'do more with less' we must seek to achieve financial savings, whilst improving the service we deliver. Consequently, we are looking at every opportunity to avoid waste and seek initiatives on-island to reduce, re-use and recycle, whilst also reducing our reliance on mainland options, wherever possible.

Nonetheless, we will still need to dispose of residual waste and recyclables to the mainland. As such, this waste haulage contract must be designed and managed to ensure it offers good value for money and is flexible enough to meet the new national policy being introduced and the desire to move towards segregated recycling streams, we know we will need to accommodate these changes, whilst remaining resilient and flexible into the future.

In line with the Government's forthcoming waste reforms, we plan to segregate our recycling further over the next few years. It is therefore essential that the new waste haulage contract must reflect value for money in the haulage of segregated recycling streams moving forwards.

Furthermore, by 2023, the Council is required to remove food waste from the residual waste stream.

## Resilience & Business Continuity

The geographic location of the Isles of Scilly can pose a significant challenge no matter what time of the year, although the winter months can prove more problematic with significant weather fronts rolling through which can impact waste shipments.

Business continuity plans are essential to ensure the smooth and efficient running of this critical operational service.

## Procurement Process

The Council is seeking contractor/s to deliver a 4 -year (+1) service for the haulage of waste and recycling from Porthmellon Waste Management Site on St Marys to a waste collection vehicle at Penzance Quay, and the return of empty containers to ensure a continuous service.

In order for the Council to achieve a fully integrated and efficient waste haulage system and to ensure business continuity and the smooth running of the service, the procurement will be let in one single combined lot of road and marine haulage.

## Section C: Instructions to Tenderers

### General

- C.1 These instructions are designed to ensure that all Tenderers are given equal and fair consideration. It is important therefore that you provide all the information asked for in the format and order specified. Please contact [procurement@scilly.gov.uk](mailto:procurement@scilly.gov.uk) if you have any doubt as to what is required or will have difficulty in providing the information requested. In his absence the email address will be checked by his colleagues to ensure that a swift response to any questions raised by tenderers is delivered.
- C.2 Tenderers should read these instructions carefully before completing the Tender documentation. Failure to comply with these requirements for completion and submission of the Tender Response may result in the rejection of the Tender. Tenderers are advised therefore to acquaint themselves fully with the extent and nature of the services and contractual obligations. These instructions constitute the Conditions of Tender. Participation in the tender process automatically signals that the Tenderer accepts these Conditions of Participation.
- C.3 All documentation issued in connection with this Invitation to Tender (ITT) shall remain the property of the Authority and/or as applicable relevant Other Contracting Bodies (OCB) and shall be used only for the purpose of this procurement exercise. All Due Diligence Information shall be either returned to the Authority or securely destroyed by the Tenderer (at the Authority's option) at the conclusion of the procurement exercise.
- C.4 The Tenderer shall ensure that each and every sub-contractor, consortium member and adviser abides by the terms of these instructions and the Conditions of Tender.
- C.5 The Tenderer shall not make contact with any other employee, agent or consultant of the Authority or any relevant OCB who are in any way connected with this procurement exercise during the period of this procurement exercise, unless instructed otherwise by the Authority.
- C.6 The Authority shall not be committed to any course of action as a result of:
  - C.6.1 issuing this ITT or any invitation to participate in this procurement exercise;
  - C.6.2 an invitation to submit any Response in respect of this procurement exercise;
  - C.6.3 communicating with a Tenderer or a Tenderer's representatives or agents in respect of this procurement exercise; or

- C.6.4 any other communication between the Authority and/or any relevant OCB (whether directly or by its agents or representatives) and any other party.
- C.7 Tenderers shall accept and acknowledge that by issuing this ITT the Authority shall not be bound to accept any Tender and reserves the right not to conclude an Agreement for some or all of the services for which Tenders are invited. Tenderers should be aware that no contractual relationship shall exist or be construed as existing between the Council and the successful tenderer until such time as the contract connected with this tender is duly executed and/or signed. Any works undertaken by the successful tenderer in the period between notification of award and the signing of the contract shall be considered as being at the tenderers risk.
- C.8 The Authority reserves the right to amend, add to or withdraw all, or any part of this ITT at any time during the procurement exercise.

### Confidentiality

- C.9 Subject to the exceptions referred to in paragraph C10, the contents of this ITT are being made available by the Authority on condition that:
- C.9.1 Tenderers shall at all times treat the contents of the ITT and any related documents (together called the 'Information') as confidential, save in so far as they are already in the public domain;
- C.9.2 Tenderers shall not disclose, copy, reproduce, distribute or pass any of the Information to any other person at any time or allow any of these things to happen;
- C.9.3 Tenderers shall not use any of the Information for any purpose other than for the purposes of submitting (or deciding whether to submit) a Tender; and
- C.9.4 Tenderers shall not undertake any publicity activity within any section of the media.
- C.10 Tenderers may disclose, distribute or pass any of the Information to the Tenderer's advisers, sub-contractors or to another person provided that either:
- C.10.1 This is done for the sole purpose of enabling a Tender to be submitted and the person receiving the Information undertakes in writing to keep the Information confidential on the same terms as if that person were the Tenderer; or
- C.10.2 The Tenderer obtains the prior written consent of the Authority in relation to such disclosure, distribution or passing of Information; or
- C.10.3 The disclosure is made for the sole purpose of obtaining legal advice from external lawyers in relation to the procurement or to any Contract arising from it; or
- C.10.4 The Tenderer is legally required to make such a disclosure.
- C.11 In paragraphs C9 and C10 above the definition of 'person' includes but is not limited to any person, firm, body or association, corporate or incorporate.
- C.12 The Authority may disclose detailed information relating to Tenders to its officers, employees, agents or advisers and the Authority may make any of the Contract documents available for private inspection by its officers, employees, agents or advisers. The Authority also reserves the right to disseminate information that is materially relevant to the procurement to all Tenderers, even if the information has only been requested by one Tenderer, subject to the duty to protect each Tenderer's commercial confidentiality in relation to its Tender (unless there is a requirement for disclosure under the Freedom of Information Act, as explained in paragraphs C13 to C16 below).
- C.12.1 The tenderer should be aware that the Authority is required to disclose certain information relating to this procurement process in compliance with the Local Government Transparency Code 2015. This information will include, but may not be limited to, all payments to

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

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

### Freedom of Information

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

### Tender Validity

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

### Timescales

- C.18 The proposed procurement timetable is as set out in the introduction to this document.

### Authority's Contact Details

- C.19 Unless stated otherwise in these Instructions or in writing from the Authority, all communications from Tenderers (including their sub-contractors, consortium members, consultants and advisers) during the period of this procurement exercise must be directed to the designated Authority officer named in paragraph C.1 above.
- C.20 All communications should be clearly headed **Invitation to Tender for CloS220914** and include the name, contact details and position of the person making the communication.
- C.21 Requests for Tender clarifications must be submitted in accordance with the procedure set out in C51 to C57 – Queries Relating to Tender.

## Expressions of Interest and Intention to Submit a Tender

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

## Preparation of Tender

- C.25 Tenderers must obtain for themselves at their own responsibility and expense all information necessary for the preparation of Tenders. Tenderers are solely responsible for the costs and expenses incurred in connection with the preparation and submission of their Tender and all other stages of the selection and evaluation process. Under no circumstances will the Authority, or any of their advisers, be liable for any costs or expenses borne by Tenderers, sub-contractors, suppliers or advisers in this process.
- C.26 Tenderers are required to complete and provide all information required by the Authority in accordance with the Conditions of Tender and the Invitation to Tender. Failure to comply with the Conditions and the Invitation to Tender may lead the Authority to reject a Tender Response.
- C.27 The Authority relies on Tenderers' own analysis and review of information provided. Consequently, Tenderers are solely responsible for obtaining the information which they consider necessary in order to make decisions regarding the content of their Tenders and to undertake any investigations they consider necessary in order to verify any information provided to them during the procurement process.
- C.28 Tenderers must form their own opinions, making such investigations and taking such advice (including professional advice) as is appropriate, regarding the services and their Tenders, without reliance upon any opinion or other information provided by the Authority or their advisers and representatives. Tenderers should notify the Authority promptly of any perceived ambiguity, inconsistency or omission in this ITT, any of its associated documents and/or any other information issued to them during the procurement process. Where tenderers fail to undertake investigations or fail to seek appropriate advice into their own proposed delivery model, the liability for any impacts will rest with the Tenderer.

Tenderers should, in developing their methodologies seek the advice, and where necessary, permissions of all relevant authorities with whom they intend to interact during the delivery of

the project and ensure that all associated costs associated with any such permissions are included within their tender submission.

### Submission of Tenders

- C.29 The Tender must be submitted in the form specified in the Instructions to Tenderers in Section D. Failure to do so may render the Response non-compliant and it may be rejected.
- C.30 The Authority may at its own absolute discretion extend the closing date and the time for receipt of Tenders.
- C.31 Any extension granted will apply to all Tenderers.
- C.32 Tenderers must submit:
  - C.32.1 **one unpriced electronic copy** of their Tender (i.e. excluding the response to section D.5).
  - C.32.2 **One priced electronic copy** of their Tender including both the priced and unpriced version of the submission with narratives in Microsoft Word or compatible equivalent and financial details in Microsoft Excel or compatible equivalent. PDF versions are acceptable but should accompany a version submitted in a Microsoft Word compatible submission.
- C.33 The original and the copies must be formatted to A4 paper, single line spaced, in Arial with a minimum size 11 font and securely bound and signed by the Tenderer's authorised representative.
- C.34 In line with Government objectives to achieve ISO14001:2015 (Environmental Management Systems), the Authority asks that you do not include any of the following with your Tender:
  - C.34.1 Any lever arch folder or ring binder;
  - C.34.2 Any extraneous information that has not been specifically requested in the ITT
  - C.34.3 Any sales literature
  - C.34.4 Any additional terms and conditions.
- C.35 In relation to the submission of electronic copies, Tenderers should note that they are not to email copies of the tender to the authority and any emailed submissions will be deleted without consideration.
  - C.35.1 Therefore, electronic copies must be **uploaded to your allocated SharePoint folder**
- C.36 The Tender and any documents accompanying it must be in the English language.
- C.37 Price and any financial data provided must be submitted in or converted into pounds sterling. Where official documents include financial data in a foreign currency, a sterling equivalent must be provided. The basis of any conversion from one currency to another must be clearly identified within the tender. This should include the exchange rate that has been used, the source of the exchange rate and the date on which the exchange rate was correct.
- C.38 It is recommended that the ITT envelopes and packages are submitted by registered post, recorded delivery service or delivered by hand, and must bear no reference to the Tenderer by name marked on the envelope or in the franking thereon. Tenderers should include the phrase **"Tender for CIO220914"** at a clearly visible place on the envelope so as to avoid the unintentional opening of tenders prior to the deadline date. **Tenders are to be returned and received by the Authority at its SharePoint folder by no later than 16:00 on 24/10/2022.**

Responses received after this date will not be accepted unless irrefutable proof is provided by the tenderer that the tender was posted in sufficient time, with the appropriate postage paid and using a service that should have, were normal operating conditions assumed, reached the authority by the date and time of the deadline for the receipt of the tender. It is therefore recommended that sufficient evidence of the time, date and method of delivery/service is retained by the tenderer to assist the Authority in its determinations where there is a possibility that a late delivery might occur. The Authority will consider the evidence provided by the tenderer but any decision relating to the late delivery of a tender will be made at the sole discretion of the Authority.

- C.39 Tenders delivered by hand must be received at the reception desk at the address above by **24/10/2022 the Deadline**). Envelopes and packages should not bear any reference to the Tenderer by name but should include a reference to the contract reference number.
- C.40 Tenders will be received any time up to the deadline stated above. Tenders received before this deadline will be retained in a secure environment, unopened until the opening date.
- C.41 The Authority does not accept responsibility for the premature opening or mishandling of Tenders that are not submitted in accordance with these instructions.
- C.42 Where applicable, account will also be taken of any factors which may impact on the Tenderers suitability that emerge from the tendering process and relate to information previously provided by the Tenderer as part of a pre-qualification process or information submitted as part of any qualitative selection process (including submitted European Single Procurement Documents documents). If the Tenderers circumstances have changed significantly from the position stated in the PQQ or ESPD this may lead to disqualification of the Tenderer from the Tender process.

#### Canvassing

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

#### Disclaimers

- C.44 Whilst the information in this ITT, Due Diligence Information and supporting documents has been prepared in good faith, it does not purport to be comprehensive nor has it been independently verified.
- C.45 Neither the Authority, nor any relevant OCBs nor their advisors, nor their respective directors, officers, members, partners, employees, other staff or agents:
  - C.45.1 makes any representation or warranty (express or implied) as to the accuracy, reasonableness or completeness of the ITT; or
  - C.45.2 accepts any responsibility for the information contained in the ITT or for their fairness, accuracy or completeness of that information nor shall any of them be liable for any loss or damage (other than in respect of fraudulent misrepresentation) arising as a result of reliance on such information or any subsequent communication.
- C.46 Any persons considering making a decision to enter into contractual relationships with the Authority and/or, as applicable, relevant OCB following receipt of the ITT should make their own investigations and their own independent assessment of the Authority and/or, as

applicable, relevant OCB and its requirements for the services and should seek their own professional financial and legal advice. For the avoidance of doubt the provision of clarification or further information in relation to the ITT or any other associated documents (including the Schedules) is only authorised to be provided following a query made in accordance with paragraph 16 of this Invitation to Tender.

- C.47 Any Agreement concluded as a result of this ITT shall be governed by English law, and enforceable under the exclusive jurisdiction of the English Court.

#### **Collusive Behaviour**

- C.48 Any Tenderer who:

- C.48.1 fixes or adjusts the amount of its Tender by or in accordance with any agreement or arrangement with any other party; or
- C.48.2 communicates to any party other than the Authority or, as applicable, relevant OCB the amount or approximate amount of its proposed Tender or information which would enable the amount or approximate amount to be calculated (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender or insurance or any necessary security); or
- C.48.3 enters into any agreement or arrangement with any other party that such other party shall refrain from submitting a Tender; or
- C.48.4 enters into any agreement or arrangement with any other party as to the amount of any Tender submitted; or
- C.48.5 offers or agrees to pay or give or does pay or give any sum or sums of money, inducement or valuable consideration directly or indirectly to any party for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender, any act or omission,
- C.48.6 Or colludes with any party with the objective of distorting the outcome of the tender process, shall (without prejudice to any other civil remedies available to the Authority and without prejudice to any criminal liability which such conduct by a Tenderer may attract) be disqualified.

#### **No Inducement or Incentive**

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

#### **Acceptance and Admission to the Agreement**

- C.50 The Tenderer in submitting the Tender undertakes that in the event of the Tender being accepted by the Authority and the Authority confirming in writing such acceptance to the Tenderer (notification of a successful tender), the Tenderer will within 30 days of being called upon to do so by the Authority execute the Agreement in the form set out in Invitation to Tender pack or as amended in accordance with any clarifications requests accepted during the tender period by the Authority which effect the Agreement. Tenderers are reminded that no contractual relationship shall exist as a consequence of the notification and that until such time as a formal contract has been entered into by both parties i.e. the contract is formally signed and/or executed, that any operations undertaken by the tenderer are at their own risk
- C.51 The Authority shall be under no obligation to accept the lowest or any Tender.

### Queries Relating to Tender

- C.52 All requests for clarification about the requirements or the process of this procurement exercise shall be made in accordance with paragraph C.53 of these Instructions.
- C.53 The Authority will endeavour to answer all questions as quickly as possible, but cannot guarantee a minimum response time. The Authority has designated a specific window of time to deal with clarification requests from Tenderers.
- C.54 Clarification requests can be submitted via e-mail to [procurement@scilly.gov.uk](mailto:procurement@scilly.gov.uk) from 21/9/2022
- C.55 No further requests for clarifications will be accepted outside of the period referenced in the table at page 3 or, where applicable, the date or time as amended and communicated to tenderers either by email or reissue of the ITT.
- C.56 In order to ensure equal treatment of Tenderers, the Authority intends to publish the questions and clarifications raised by Tenderers together with the Authority's responses (but not the source of the questions) to all participants on a regular basis.
- C.57 Tenderers should indicate if a query is of a commercially sensitive nature – where disclosure of such query and the answer would or would be likely to prejudice its commercial interests. However, if the Authority at its sole discretion does not either; consider the query to be of a commercially confidential nature or one which all Tenderers would potentially benefit from seeing both the query and Authority's response, the Authority will:
- C.57.1 invite the Tenderer submitting the query to either declassify the query and allow the query along with the Authority's response to be circulated to all Tenderers; or
- C.57.2 request the Tenderer, if it still considers the query to be of a commercially confidential nature, to withdraw the query.
- C.58 The Authority reserves the right not to respond to a request for clarification or to circulate such a request where it considers that the answer to that request would or would be likely to prejudice its commercial interests. The Authority does not guarantee that the submission of a clarification question will result in an answer being provided by it within the timescales of the tender but will in every case use its best endeavours to do so.

### Amendments to Tender Documents

- C.59 At any time prior to the deadline for the receipt of Tenders, the Authority may modify the ITT by amendment. Any such amendment will be numbered and dated and issued by the Authority to all prospective Tenderers by 14/10/2022. In order to give prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, the Authority may, at its discretion, extend the Deadline for receipt of Tenders.

### Late Tenders

- C.60 Any Tender received at the designated point after 16:00 on 24/10/2022 will be rejected unless the Tenderer can provide irrefutable evidence that the Tender was capable of being received by the due date and time.

### Proposed Amendments to the Agreement by the Tenderer

- C.60 The contract issued with this Tender Pack should be considered in detail by Tenderers as part of submitting their tender. Tenderers wishing to clarify the terms and conditions of the contract may do so by issuing a clarification request as set out in paragraph C 52 through C.58.

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

#### **Modification and Withdrawal**

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

#### **Right to Reject/Disqualify**

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

#### **Right to Cancel, Clarify or Vary the Process**

- C.68 The Authority reserves the right to:

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

#### **Customer References**

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

#### **Notification of Award, Standstill and Contracting**

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

## Section D: Response, Submission and Evaluation

### Required Response Format

This section sets out the required structure of the Tender. There are no specific word limits, however Tenderers should ensure that responses are relevant and proportionate to the questions being addressed.

### On Island and Marine Haulage

*The Collection of full waste containers from St Marys Waste Management Site and haulage to freight vessel at St Marys Quay, Marine haulage from St Marys Quay to Penzance Quay and management of transfer to Waste Collection Vehicle (and the return of empty waste containers).*

Further details of the scope of these Lots is available in [Section E: The Scope of Service](#).

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

Tenders will be evaluated on the basis of 40% Qualitative assessment: 60% Cost

### Please Return

Tenderers are required to return with their submission:

- **A completed version of Appendix A: Standard Selection Questionnaire**
- **A response to each of the D1 to D5 Award Criteria**
- **Each response to D1 to D5 to be limited to two typed sides of A4.**

Qualitative assessments will be scored against the following matrix:

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

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

D.1 An **Executive Summary** – highlighting the key elements of the proposed approach and commercial matters. (0%)

D.2 **Methodology (30%)**

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

D.2.1.1 (15%) An overview of the providers proposed methodology for reducing its impact on the environment which should include but not limited to; (Max 1 side of A4 per heading).

- *A copy of the contractors Carbon Reduction / Environmental Policy*
- *How the contractor will assist the Council in reaching its 2030 net zero carbon goal*
- *How the Contractor is reducing its own impact on the environment*
  - *Carbon emissions (marine and road haulage)*
  - *Waste reduction (including packaging waste)*
  - *Fuel consumption and journey planning*
  - *Paper consumption*
  - *Nature & biodiversity*
  - *Any other significant environmental impacts and contractor activity to reduce them*

D.2.1.2 (15%) An overview of the providers proposed methodology for delivering the contract which should include but not limited to; (Max 1 side of A4 per heading).

- *Legal compliance and the transportation of waste (including Duty of Care, waste documentation, current and future waste tracking processes)*
- *Waste collection*
- *Waste transfer*
- *Vehicle and equipment specification and maintenance*
- *Business Continuity Plans*
- *Contract Management and Key Performance Indicators*
- *Innovation*

D.3 **Environment, Health & Safety (5%)**

Using the following table below, tenderers should outline the potential environmental, health and safety risks and associated mitigations in the delivery of this contract.

- **Environmental** (e.g. noise, vermin, litter, dust, odour, traffic & vibration, liquid, solid and gaseous emissions & pollution response, etc)
- **Health & Safety** (slips, trips and falls, movement of mobile plant, moving, falling, objects, etc)

<b>Nature of the Risk</b>	<b>Risk Description</b>	<b>Mitigating action</b>
(e.g. environmental / health & safety)	(e.g. Litter)	

D.4 **Contract Risk Register (5%)**

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

- *Storm events impacting marine haulage*
- *Vehicle failure*
- *Vessel failure*
- *Lack of staff availability*
- *Change in CloS waste contractor*
- *Change in segregation of waste streams and containerisation*
- *Change in waste legislation*
- *Any other risks to the contract*

<b>Risk Register</b>	<b>Likelihood of risk occurring</b>	<b>Impact if the risk occurs</b>	<b>Nature</b>	<b>Stakeholder</b>	<b>Mitigating action</b>	<b>Contingent action</b>	<b>Residual Risk after action</b>
	<i>high, med, low</i>	<i>high, med, low</i>	<i>operational legislative, etc</i>				<i>high, med, low</i>

## D.5 Price (60%)

- D.5.1 Tenderers should complete the enclosed spreadsheet showing their per/tonne or Per/container and a contract price for the purposes of tender evaluation. This price should include all expenses, but exclude VAT.

The pricing should consider the estimated waste and recycling volumes identified within the specification which is based on the 2021/2022 waste data.

- 5400 Tonnes – Total Tonnage of Waste & Recyclates over 4 years
- Of which Recyclates is estimated to be up to 1076 tonnes over 4 years
- Of which Residual Waste (including additional waste streams identified in the scope) is estimated to be approximately 4,336 tonnes

It is estimated that the residual waste stream will reduce significantly as recycling rates increase, and in particular once the food waste segregation has been implemented, however this will continue to be sent to the mainland.

Tenderers should be aware that the operational contract value will be based on actual waste volumes and be reviewed annually to reflect changes in fuel costs. Tenderers are asked to submit a cost plus tender price.

Specification Element		£/tonne	OR	£/Container
<b>On island and Marine Haulage</b>	<b>Collection of waste and recycling from St Marys Waste Management Site and haulage to freight vessel at St Marys Quay, marine haulage from St Marys Quay to Penzance port and management of transfer to Waste Collection Vehicle (and the return of empty waste containers).</b>			
<b>Residual Waste (Blended black bag and shredded bulky)</b> 14yd skips Dimensions (approx.): (L) 3700mm x (W) 1900 mm x (H) 2300mm Max Laden Weight: 8.5 tonnes Estimated Tare Weight: 1.5 tonnes			OR	
<b>Food waste</b>  TBC				
<b>Recycling (dry mixed / segregated)</b>  Baled, wrapped and palletised <b>(secure, leak proof)</b>  Container: unknown Dimensions: unknown Max Laden Weight: unknown Estimated Tare Weight: unknown			OR	
<b>Scrap Metal Recycling Containers</b>  8 yd open skips Dimensions (approx.): (L) x 3200mm (W) 1800mm x (H) 1200mm Max Laden Weight: 3 tonnes Estimated Tare Weight: 500kg			OR	
<b>Flat Glass, Plasterboard &amp; Asbestos Containers</b>  8yd enclosed skips Dimensions (approx.): (L) 3300mm x (W) 1900 mm x (H) 1700mm Max Laden Weight: 3 tonnes Estimated Tare Weight: 500kg			OR	
<b>Cooking/Vegetable Oil Recycling Containers</b>  Caged IBC Dimensions (approx.): (L)1200mm x (W) 1000mm x (H) 1200mm Max Laden Weight: 1 tonne Estimated Tare Weight: 50kg			OR	
<b>Tyres</b> 14yd Compactor skips Dimensions (approx.): (L) 3700mm x (W) 1900 mm x (H) 2300mm Max Laden Weight: 8.5 tonnes Estimated Tare Weight: 1.4 tonnes			OR	
<b>Return</b> of empty waste containers			OR	
<b>TOTAL PRICE</b>		OR		

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

### Scoring Methodology:

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

- All tenderers Price submissions are summed and a mean average price is established.
- The mean average price constitutes the value at which 50% of the available score for price is met. For example, if the mean average of all the prices was £150,000 any individual submission equalling this value would achieve 50% of the Price weighting (in this tender 60%). In this example the score awarded to such a submission would be 30% (50% of a total of 60 = 30%)
- The formula identifies tenderers proximity to this 50% benchmark value and awards, on a graduated basis, relatively higher marks for those submission whose price is lower than this benchmark (reflecting better price offered to the Authority) and relatively lower marks for those submissions whose price is higher than this benchmark.
- Mathematically the process used can be expressed as
  - Mean Average/Price submission \*0.5
  - As an example, two tenders are received and the prices of these tenders are £100,000 and £200,000. This generates a mean average of £150,000. The calculation is applied to the price submission with the following result:
    - Tender 1 -  $150,000/100,000 * 0.5 = 0.75$
    - Tender 2 –  $150,000/200,000 * 0.5 = 0.375$
  - The values generated for Tenders 1 and 2 (0.75 and 0.375) are then applied to the overall Price weighting for this section (in this tender 60%) to generate the final price scores for the respective tenders. This can be expressed mathematically as:
    - Tender 1 –  $60\% \times 0.75 = 45\%$
    - Tender 2 –  $60\% \times 0.375 = 22.5\%$
  - For clarity, the final Price score for Tender 1 and 2 are respectively 45% and 22.5%.

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

D.5.2.1 State the assumption

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

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

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

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

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

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

### Documents to Complete and Sign

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

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

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

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

### Submission of Tenders

D.7 Date for return of tenders:

**16:00 GMT on 24/10/2022**

D.8 Tenderers must submit:

- one original **priced** copy of their Tender
- one **unpriced** copy of their Tender; and

D.9 The original and the copies must be formatted to A4 paper, single space, in Arial with a minimum size 11 font and securely bound and signed by the Tenderer's authorised representative.

D.10 Tenderers may include a covering letter with their tender but this should not introduce any caveats or terms that change the offer as articulated in their tender response.

- D.11 Appendices may be included within your tender submission for relevant information relating to the tender response requirements. Where these appendices form part of the response to one of the above quality or price award criteria the appendices should be referenced in the response to each criteria to which they relate. Evaluators cannot assume a relationship between the response provided and an appendix and therefore where appendices are included but are not referenced in the text these may not be considered in the manner foreseen by the Tenderer.
- D.12 Unsolicited materials, for example flyers, general marketing and company literature, that do not specifically relate to the award criteria response should not be included. Unsolicited items will not be considered at all by evaluators.
- D.13 Tenderers general terms and conditions should not be included and will be rejected.
- D.14 The mechanics of Tender submission are set out in paragraphs C.28 to C.41.

### Evaluation of Tenders

- D.15 The Tender process will be conducted to ensure that Tenders are evaluated fairly to ascertain the most economically advantageous tender.
- D.16 Following the closing date for receipt of tender, the Authority will evaluate all the tenders. A decision on the appointment is expected to be made to all tenderers on **01/11/2022**
- D.17 The successful tenderer(s) will be selected on the basis of the most economically advantageous proposal, having regard to the evaluation criteria specified in this ITT. The Authority shall not be bound to accept any proposal received or to award any contract pursuant to this Invitation to Tender.
- D.18 Tenders will be evaluated by applying a weighting of:  
40% in respect of the evaluation for quality (made up of the sub-criteria identified at D1 to D4);  
60% in respect of the evaluation for price (made up of the sub criteria at D 5.1)
- D.19 The sub-criteria and weightings in respect of the evaluation of the services are outlined in D1-D5.
- D.20 A Tenderer(s) will be awarded a Contract, who, in the opinion of the Authority at the conclusion of the evaluation, offers the Most Economically Advantageous Tender to the Authority having regard to the total score of the award criteria set out in D1-D5 i.e. the summed total of the scores for all the award criteria/sub-criteria. Prior to awarding the contract the Authority shall undertake checks on the selection phase information (Annex A: Standard Selection Questionnaire) to ensure that there are no reasons why this contract should not be awarded to the Tenderer(s). Supplementary information including the "means of proof" may be requested to ensure that the statements made are accurate. Where required "self-cleaning" information may be requested from the tenderers in question.
- D.21 If a tenderer fails the selection phase requirements, including being unable to adequately "self-clean", the Authority will be unable to award the contract to that contractor and they will be deselected from the tender evaluation process. In terms of the effect of this situation on the evaluation process, the evaluation process would appear as if the Tenderer had never submitted a tender and the Authority would seek to award the contract to the Tenderer which then presents as offering the Most Economically Advantageous Tender.

## Evaluation Process

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

TABLE 2: EVALUATION PROCESS	
Phase 1	Independent Evaluation of Tender Responses
Phase 2	Moderation of Scores and Consensus Scores based on the mean average of the Independent Evaluations
Phase 3	Identification of the Most Economically Advantageous Tender
Phase 4	Verification of the Selection Phase Response – Appendix A: Standard Selection Questionnaire (Successful Tenderer(s) only)
Repetition of Phase 3 and 4 in the event of de-selection	
Phase 5	Notification of Successful and Unsuccessful Tenderers

## Award of Contract

D.23 The Authority will inform all Tenderers in writing via email of its decision to award the contract.

D.24 All Tenderers will be provided with the following information (in so far as it applies to their tender):

- the criteria for the award of the contract (D1 – D5 above);
- the reason for the decision, including the characteristics and relative advantages of the successful tender, the score (if any) obtained by -
  - the Tenderer in receipt of the notice;
  - the Tenderer to be awarded the contract
- a precise statement of either
  - when the standstill period is expected to end and how the timing of its ending may be affected by any and what contingencies, or
  - the date before which the Authority will not, in conformity with Regulation 87 enter into the contract

## Section E: The Scope of Service

### Specification for a Waste Haulage Service

#### E.1 Scope of Service

The Council is seeking contractor/s to deliver a 4-Year (+1) year service for the haulage of waste and recycling from Porthmellon Waste Management Site on St Marys to a waste collection vehicle at Penzance Port, and the return of empty containers to ensure a continuous service.

It is estimated that there will be approximately 5400tonnes of total waste and recycling (separated into 6/7 fractions) over a 4-year (+1) contract. a 12-month period;

1. 14 yd closed skips (blended black bag and residual waste)
2. 14 yd compactor skips (tyres)
3. 8 yd open skips (scrap metal)
4. 8 yd enclosed skips (flat glass, plasterboard & asbestos)
5. Caged IBC (cooking/vegetable oil for recycling)
6. Baled, wrapped and palletised (dry mixed / dry segregated recycling)
7. Food waste (containers TBC)

There is scope for the waste and recycling container specifications to change over time in line with changes to requirements of the mainland waste contractor. Any changes will be addressed in regular contract management meetings and solutions agreed.

In order for the Council to achieve the best value from the tender process, this contract is being tendered in 1 LOT.

***The Collection of waste and recycling from St Marys Waste Management Site and haulage to freight vessel at St Marys Quay, marine haulage from St Marys Quay to Penzance Quay and management of transfer to Waste Collection Vehicle (and the return of empty waste containers).***

A contractor is being sought to undertake the following work elements:

On a weekly basis (frequency and quantity estimated below):

1. Load full waste and recycling containers onto their own vehicle at Porthmellon Waste Management Site.
2. Transport containers to St Marys Quay
3. Manage the transfer from St Mary's Quay in accordance with current UK regulations, from St Marys to Penzance Quay
4. Accept containers onto their own vessel at St Mary's Quay
5. Ship containers from St Mary's Quay to Penzance Quay
6. Manage (including the schedule of) the safe and compliant transfer in accordance with current UK regulations from their vessel to a waste collection vehicle (8x4 RORO) at Penzance Quay.
7. Manage the transfer of empty containers back from the waste collection vehicle, onto their own vessel in Penzance and transfer to St Mary's Quay.
8. Manage the haulage of empty containers from the vessel to St Mary's Quay and return them in their own vehicle to Porthmellon Waste Management Site.
9. Load empty waste containers onto empty stillages at Porthmellon Waste Management Site ready for reloading.

It is anticipated that from the beginning of the contract there will be weekly movements of residual waste skips and pallets of dry recycling mixed, with some seasonal variation:

In peak season, the Council is likely to require the export of up to 8 residual waste skips and 8 pallets of recycling a week, and the return of the same number of empty skips to site.

In low season, the Council is likely to require the export of 4 residual waste skips and 4 pallets of recycling a week, and the return of the same number of empty skips to site.

In addition to residual waste and recycling, the Council also sends skips containing scrap metal (8yd skip), flat glass, plasterboard, asbestos, tyres and cooking oil (in IBC's) regularly throughout the year.

The Council is currently working with its waste contractor (Suez) to establish the collection and recycling / disposal of food waste. This is due to commence over the next 12-24 months, with weights, and operational logistics of haulage of this waste stream has not yet been defined and will require ongoing discussions with the successful tenderer, the Council and the Council's current waste contractor, Suez.

### **Container Specifications**

#### **Residual Waste Containers**

14yd Compactor skips

Dimensions (approx.): (L) 3700mm x (W) 1900 mm x (H) 2300mm

Max Laden Weight: 8.5 tonnes

Estimated Tare Weight: 1.4 tonnes

#### **Recycling Pallets**

Euro Pallets (baled and wrapped, palletised)

Dimensions (approx.): (L) x 1600mm (W) 1300mm x (H) 1800mm

Max Laden Weight: 1 tonne

Estimated Tare Weight: N/A (no return)

#### **Food waste**

To be agreed

#### **Scrap Metal Containers**

8 yd Open Skips

Dimensions (approx.): (L) x 3200mm (W) 1800mm x (H) 1200mm

Max Laden Weight: 3 tonnes

Estimated Tare Weight: 500kg

#### **Flat Glass, Plasterboard, Asbestos Containers**

8yd Enclosed Skips

Dimensions (approx.): (L) 3300mm x (W) 1900 mm x (H) 1700mm

Max Laden Weight: 3 tonnes

Estimated Tare Weight: 500kg

#### **Cooking/Vegetable Oil Containers**

Caged IBC

Dimensions (approx.): (L)1200mm x (W) 1000mm x (H) 1200mm

Max Laden Weight: 1 tonne

Estimated Tare Weight: 50kg

**Tyre Containers**

14yd Compactor skips

Dimensions (approx.): (L) 3700mm x (W) 1900 mm x (H) 2300mm

Max Laden Weight: 8.5 tonnes

Estimated Tare Weight: 1.4 tonnes

The Council would like to make tenderers aware of the following constraints:

- All submissions/proposals must take account of the relevant legislation and regulation relating to the transportation and disposal of waste. All legal obligations and processes must be followed
- Costs for the project should be inclusive of all labour, plant, equipment, fuel, regulatory fees and disposal costs but should exclude, where applicable, VAT.
- The work must be carried out in a timely manner and waste haulage will need to take place on at least a weekly basis unless agreed otherwise by the Council of the Isles of Scilly.
- Containerised waste may be retained on site in order to deliver cost efficiencies but the first shipment, irrespective of size, within 1 week of contract commencement.
- Thereafter, the Council will expect that contractor(s) will work cooperatively and in collaboration with all parties to ensure that the smooth and regular haulage of waste will take place during the contract period.

**Outcomes**

For the contract to be deemed a success the contractor/s must therefore ensure the following outcomes:

1. Ensure that at least 1 shipment of waste is transferred from the Porthmellon Waste Management Site within 1 weeks of the commencement of the contract
2. Ensure the legally compliant transfer of waste and dry recyclates throughout the term of contract.
3. Ensure there are adequate numbers of waste containers at the Porthmellon Waste Management site to contain waste arising from the Isles of Scilly.
4. Ensure that no more than 4 full residual containers of waste are waiting at Porthmellon Waste Management Site for haulage at any one time.

## **Section F: Draft Contract**

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

**-and-**

**(2) [THE CONTRACTOR]**

### **AGREEMENT**

Relating to the provision of

**4-Years (+1 Year) Waste Haulage Services for Waste & Recycling  
between St Mary's, Isles of Scilly and Penzance, Cornwall**

## **OPERATIVE PROVISIONS**

### **Part 1 General Provisions**

### **Pages**

1	Definitions and Interpretations
2	Term
3	Contractor Warranties and Undertakings
4	Authority's Obligations
5	Entire Agreement
6	Scope of Agreement
7	Notices
8	Mistakes in Information
9	Conflicts of Interest
10	Fraud

### **Part 2 Provision of the Services**

11	The Services
12	Manner of Carrying Out the Services
13	Standard of Work
14	Key Personnel
15	Contractor's Staff
16	Inspection of Premises
17	Licence to Occupy Authority's Premises
18	Authority Property
19	Sub-contracting for the delivery of the Services
20	Offers of Employment

### **Part 3 Payment and Price**

21	Price
22	Payment and Tax
23	Recovery of Sums Due
24	Price Adjustment on Extension of Term
25	Euro
26	Change of Law

#### **Part 4 Statutory Obligations and Regulations**

27	Prevention of Corruption
28	Discrimination
29	The Contracts (Rights of Third Parties) Act 1999
30	Environmental Sustainability Requirements
31	Health and Safety
32	Criminal Records Bureau

#### **Part 5 Protection of Information**

33	Data Protection Act
34	Confidentiality
35	Freedom of Information
36	Security of Confidential Information
37	Publicity and Media
38	Security
39	Intellectual Property Rights
40	Audit and the Audit Commission

#### **Part 6 Control of the Agreement**

41	Assignment and Sub-Contracting
42	Waiver

- 43 Variation of the Service
- 44 Severability
- 45 Remedies in the Event of Inadequate Performance
- 46 Remedies Cumulative
- 47 Possible Extension of Term

#### **Part 7 Liabilities**

- 48 Indemnity and Insurance
- 49 Not used
- 50 Warranties and Representations

#### **Part 8 Default, Disruption and Termination**

- 51 Termination on Change of Control and Insolvency
- 52 Termination on Default
- 53 Break
- 54 Consequences of Termination
- 55 Disruption
- 56 Recovery upon Termination
- 57 Force Majeure

#### **Part 9 Disputes and Law**

- 58 Governing Law
- 59 Dispute/Resolution

**THIS AGREEMENT** is made on [date in manuscript]

**BETWEEN**

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

**RECITALS:**

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

**OPERATIVE PROVISIONS:**

**Part 1 – General Provisions**

**1. Definitions and Interpretations**

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

"1976 Act" means the Race Relations Act 1976.

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

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

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

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

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

“Best Value Duty” means the duty imposed on the Authority by Part 1 of the 1999 Act and under which the Authority is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act.

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

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

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

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

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information.

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

“Contract Waste” means all residual and bulky waste, as defined in the Specification, which is to be included as directed to the Contractor’s Representative by the Contract

Manager, together with any other such non-hazardous waste as required from time to time to be removed from the site, subject to any agreed variation in associated cost..

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

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

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

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

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

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

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

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

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

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental

regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Contractor's Staff or any staff of any sub-contractor.

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

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

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

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

"Invitation to Tender" means an invitation for Contractors to bid for the Services required by the Authority.

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

"Landfill Tax" has the meaning defined in Finance Act 1996 (sections 39 to 71 inclusive, and Schedule 5); Landfill Tax Regulations 1996 (SI 1996 No. 1527), as amended; Landfill Tax (Qualifying Material) Order 2011 (SI 2011 No. 1017); Landfill Tax (Prescribed Landfill Activities) Order 2009 (SI 2009 No. 1929); and any subsequent legislation.

"Law" means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code,

judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.

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

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

“Month” means calendar month.

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

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

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

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

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

“Quality Standards” means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body that a skilled and experienced operator engaged in the same type of industry or business as the Contractor would reasonably and ordinarily be expected to comply as supplemented by the Specification.

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

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

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

“Schedule” means a schedule attached to the Agreement.

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

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

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

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

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

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

“Tax” means value added tax.

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

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

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

“Variation” has the meaning given to it in 43.1

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

1.2 In the Agreement except where the context otherwise requires:

- (a) the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;
- (d) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- (h) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

## **2 Term**

2.1 The Agreement shall take effect on the 18<sup>th</sup> November 2022 or on any early date upon which the Contractor and the Authority execute the Agreement which ever is the sooner and shall, subject to clause 2.2, be completed by 19<sup>th</sup> November 2026, or upon completion of the removal of the Contract Waste, unless another completion date is agreed between the Authority and the Contractor, and unless it is otherwise terminated in accordance with the Agreement, or otherwise lawfully terminated.

2.2 The Authority may seek to extend the duration of the Agreement in accordance with clause 47. During the Extension, the obligations under the Agreement shall continue (subject to any Variation) or adjustment to the Price pursuant to clause 24 until the expiry of the period specified in accordance with clause 47.

## **3 Contractor Warranties and Undertakings**

### 3.1. **Contractor Undertakings**

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

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

### 3.2 **Contractor Warranty**

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

- 3.2.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 3.2.1 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
- 3.2.2 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken;
- 3.2.3 the obligations expressed to be assumed by the Contractor under this Contract will be, legal, valid, binding and enforceable;
- 3.2.4 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract, any Ancillary Document or any Other Contract Document;
- 3.2.5 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract; and
- 3.2.6 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding-

up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;

3.2.7 it is undertaken all necessary due diligence in compiling its tender submission in response to the Authority's invitation to tender and in accepting this Agreement. Any such due diligence should include but is not limited to discussion with all other relevant authorities and bodies with whom the Contractor will interact during the term of the Agreement, and that all costing has been priced accordingly.

3.2.8 it has obtained all necessary permissions and permits, both on land, and sea, to undertake and perform the Services

and the Authority relies upon such warranties and representations.

### **3.3 No Warranty by Authority**

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

### **3.4 No Liability to Contractor**

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

3.4.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the data provided in the Invitation to Tender; or

3.4.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Project.

### **3.5 Fraudulent Statements**

The Contractor warrants:

3.5.1 nothing in this Clause 3 (General Warranties and Undertakings) shall exclude any liability which the Authority or any of its agents or employees

would otherwise have to the Contractor in respect of any statements made fraudulently prior to the date of this Contract; and

- 3.5.1 the provisions of this Clause 3 (General Warranties and Undertakings) are without prejudice to the Contractor's express rights and remedies under or pursuant to this Contract.

### **3.6 Contractor's Due Diligence**

The Contractor warrants:

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

## **4 Authority's Obligations**

- 4.1 Save as otherwise expressly provided, the obligations of the Authority under the Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Authority to the Contractor.

## **5 Entire Agreement**

- 5.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
- 5.2 Except as otherwise expressly provided, the Contract Documents are to be taken as mutually explanatory of one another. Should the Contractor become aware of any ambiguities or discrepancies in or between the Contract Documents, the Contractor shall immediately inform the Contract Manager giving full details of the ambiguity or discrepancy. Any such notified ambiguities or discrepancies or any ambiguities or discrepancies otherwise coming to the notice of the Contract Manager shall be resolved by the Contract Manager who shall issue to the Contractor any appropriate instructions.

5.3 In the event of and only to the extent of any conflict between the body of the Agreement, Specification, Invitation to Tender, Contractor's Tender and other documents referred to or attached to the Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- (1) the Agreement;
- (2) the Specification;
- (3) the Contractor's completed Pricing Schedule;
- (4) the Contractor's Service Delivery Plan; and
- (5) any other document referred to in the Agreement.

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

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

## **6 Scope of Agreement**

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

## **7 Notices**

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

7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

7.3 For the purposes of clause 7.2, the address of each Party shall be:

(a) For the Authority:

Council of the Isles of Scilly, Town Hall,

St Marys, Isles of Scilly, TR210LW

For the attention of Keith Grossett:

Tel: +44 1720424491

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

(b) For the Contractor:

[ ]

[Address: ]

[ ]

For the attention of:

Tel:

E-mail:

7.4 Either Party may change its address for service by serving a notice in accordance with this clause.

7.5 The Contractor's Representative shall be [ ] or such other person appointed pursuant to this Clause. The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Authority, the Authority and the Contract Manager shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Authority and the Contractor Manager shall not be required to determine whether any express authority has in fact been given.

7.6 The Contractor may by notice to the Authority change the Contractor's Representative. Where the Contractor wishes to do so, it shall by written notice to the Authority propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

7.7 The Contract Manager shall be appointed by the Authority at, or prior to, the Contract Commencement date or such other person appointed pursuant to this Clause. The Contract Manager shall exercise the functions and powers of the Authority in relation to the Project which are identified in this Contract as functions or powers to be carried out

by the Contract Manager. The Contract Manager shall also exercise such other functions and powers of the Authority under this Contract as may be notified to the Contractor from time to time.

7.8 The Contract Manager shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the Authority delegated to him pursuant to this Clause, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Contract Manager and all references to the "Contract Manager" in this Contract (apart from this Clause) shall be taken as reference to such person so far as they concern matters within the scope of such person's authority.

7.9 The Authority may by notice to the Contractor change the Contract Manager. The Authority shall (as far as practicable) consult with the Contractor prior to the appointment of any replacement for the Contract Manager, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of an Emergency, be such date as will not cause material inconvenience to the Contractor in the execution of its obligations under this Contract).

## **8 Mistakes in Information**

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

## **9 Conflicts of Interest**

9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of the Authority there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Authority under the provisions of the Agreement. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

9.2 The provisions of this clause shall apply during the continuance of the Agreement and for a period of two years after its termination.

## **10 Fraud**

- 10.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, and directors) and/or any of the Contractor's suppliers, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

## **Part 2 – The Provision of the Services**

### **11 The Services**

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

this clause does not arise to the extent that the delay was caused by a delay or failure by the Authority to provide Approval under clause 13.3.

- 11.6 The Contractor shall remove all Contract Waste from the Authority Premises as directed by the Contract Manager. The Contractor shall take responsibility and ownership of Contract Waste whilst it is within their care.

## **12 Manner of Carrying Out the Services**

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

Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors.

- 12.7 Access to the Authority's Premises shall not be exclusive to the Contractor but shall be limited to such Staff and the Contractor's suppliers as are necessary to perform the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others on the Authority's Premises as the Authority may reasonably require.
- 12.8 The Contractor shall be required to provide evidence of the Certified Tonnage of Contract Waste leaving the Authority Site, together with evidence of the Certified Tonnage on the Contract Waste delivered to the final destination site in accordance with the Specification. The Authority will pay the Contractor the value of the total of the Certified Tonnage in accordance with the Price upon receipt of the evidence required subject to a maximum weight variation of 2% of the Certified Tonnage amount.

### **13 Standard of Work**

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

Authority for approval and the Authority at its sole discretion will be entitled to reject any risk assessments, methodology or work programme which fail to deliver the required standard of work in accordance with clause 13.1 and require the Contractor at the Contractors own expense to prepare new or alternate Risk Assessments and Methodologies to the satisfaction of the Authority.

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

#### **14 Key Personnel**

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

#### **15 Contractor's Staff**

- 15.1 The Authority reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Authority:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by a sub-contractor, agent or servant of the Contractor;
- Whose admission or continued presence would be, in the reasonable opinion of the Authority, undesirable.

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

## **16 Inspection of Premises**

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

## **17 Licence to occupy Authority's Premises**

- 17.1 Any land or Premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Agreement, shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Agreement. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.
- 17.2 The Contractor shall not use the Authority's Premises for any purpose or activity other than the provision of the Services.
- 17.3 Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.
- 17.4 The Contractor shall (and shall ensure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the

Contractor shall pay for the cost of making good any damage caused by the Contractor, his employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

- 17.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of whatsoever nature in favour of the Contractor or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Agreement, the Authority retains the right at any time to use in any manner the Authority sees fit any premises owned or occupied by it.

## **18 Authority Property**

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

Contractor shall inform the Contract Manager within 2 Working Days of becoming aware of any defects appearing in or losses or damage occurring to Authority Property made available for the purposes of the Agreement.

## **19 Sub-Contracting for the delivery of the Services**

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

## **20 Offers of Employment**

- 20.1 For the duration of the Agreement and for a period of 12 months thereafter neither of the Authority or the Contractor shall employ or offer employment to any of the other Party's

staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior Approval.

### **Part 3 – Payment and Price**

#### **21 Price**

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

#### **22 Payment and Tax**

- 22.1 The Authority shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the reasonable satisfaction of the Authority.
- 22.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice.
- 22.3 Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.
- 22.4 The price per unit /tonne will be reviewed on an annual basis and any variation will reflect increases or decreases in the price of fuel incurred by the Contractor
- 22.5 The Authority may, in accordance with clause 45.1 (a), reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 22.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement under clause 52.3 for failure to pay undisputed charges.

#### **23 Recovery of Sums Due**

- 23.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority

in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Authority.

23.2 Any overpayment by either Party, whether of the Price or of Tax, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

23.3 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

## **24 Price adjustment on Extension**

24.1 Subject to clause 22.4 the Price shall be reviewed on an annual basis to reflect variations in fuel prices.

24.2 In the event of a possible Extension, the Authority reserves the right to review any charges payable to the Contractor for the provision of services beyond the Term.

24.3 If the Authority approaches the Contractor in accordance with Clause 47 concerning an Extension, the Authority must agree the Price to be payable to the Contractor for the provision of any services during the Extension, at least 1 months prior to the end of the Term.

24.4 Any claim for an increase in the charges during an Extension will only be considered if the increase does not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (or another such index as notified to the Contractor in writing) between the Commencement Date and the date 3 months before the end of the Term.

## **25 Euro**

25.1 Any legislative requirement to account for the services in euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.

25.2 The Authority shall provide all reasonable assistance to facilitate compliance by the Contractor under clause 25.1.

## **26 Change of Law**

- 26.1 The Contractor shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the Price and/or any charges payable by the Contractor as the result of:
- (a) a General Change in Law; or
  - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.
- 26.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 26.1) or during any extension agreed pursuant to clause 24, the Contractor shall notify the Authority of the likely effects of that change, including:
- (a) whether any change is required to the Services, the Price or the Agreement; and
  - (b) whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.
- 26.3 As soon as practicable after any notification in accordance with clause 26.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:
- (a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;
  - (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
  - (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
  - (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.
- 26.4 Any increase in the Price or relief from the Contractor's obligations agreed by the Parties pursuant to this clause 26 shall be implemented in accordance with clause 43.

#### **Part 4 - Statutory Obligations, Codes of Practice and Regulations**

### **27 Prevention of Corruption**

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

## **28 Discrimination**

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

- 28.2 The Contractor shall take all reasonable steps to secure the observance of clause 28.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

## **29 The Contracts (Rights of Third Parties) Act 1999**

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

## **30 Environmental Sustainability Requirements**

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

## **31 Health and Safety**

- 31.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Agreement. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Agreement.

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

## **32 Disclosure and Barring Service**

- 32.1 The Contractor shall procure that in respect of all potential Staff or persons performing any of the Services (each a "Named Employee") before a Named Employee begins to attend any Authority premises to perform any of the Services:
- (a) each Named Employee is questioned as to whether he or she has any convictions; and
  - (b) the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in accordance with Part V of the Police Act 1997 in respect of each Named Employee. The check for each Named Employee shall include:
    - (i) a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Services may involve contact with children; and/or
    - (ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000 where the performance of the Services may involve contact with vulnerable adults (as defined in the Care Standards Act).
  - (c) a copy of the results of such check are notified to the Authority.
- 32.2 The Contractor shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a Criminal Records Bureau check,

is employed or engaged by the Contractor or on the Contractor's behalf without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

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

## **Part 5 - Protection of Information**

### **33. DATA PROTECTION**

- 33.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor unless otherwise specified in Schedule A. The only processing that the Processor is authorised to do is listed in Schedule A by the Controller and may not be determined by the Processor.
- 33.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 33.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- 33.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 33.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 33.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 33.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 33.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 33.4.1 process that Personal Data only in accordance with Schedule A, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - 33.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject

(but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

33.4.3 Ensure that :

- (a) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A);
  - (i) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (ii) are aware of and comply with the Processor's duties under this clause;
  - (iii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - (iv) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
  - (v) have undergone adequate training in the use, care, protection and handling of Personal Data; and

33.5 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- 33.5.1 the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
- 33.5.2 the Data Subject has enforceable rights and effective legal remedies;
- 33.5.3 the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- 33.5.4 the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- 33.5.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

33.6 Subject to clause 13.6, the Processor shall notify the Controller immediately if it:

- 33.6.1 receives a Data Subject Request (or purported Data Subject Request);
  - 33.6.2 receives a request to rectify, block or erase any Personal Data;
  - 33.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 33.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 33.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 33.6.6 becomes aware of a Data Loss Event.
- 33.7 The Processor's obligation to notify under clause 13.5 shall include the provision of further information to the Controller in phases, as details become available.
- 33.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 13.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 33.8.1 the Controller with full details and copies of the complaint, communication or request;
  - 33.8.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 33.8.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 33.8.4 assistance as requested by the Controller following any Data Loss Event;
  - 33.8.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 33.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 33.9.1 the Controller determines that the processing is not occasional;
  - 33.9.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - 33.9.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- 33.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 33.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 33.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- 33.12.1 notify the Controller in writing of the intended Sub-processor and processing;
  - 33.12.2 obtain the written consent of the Controller;
  - 33.12.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
  - 33.12.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 33.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 33.14 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 33.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 33.16 Where the Parties include two or more Joint Controllers as identified in Schedule A in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule B in replacement of Clauses 13.1-13.14 for the Personal Data under Joint Control Liability.

## **34 Confidentiality**

- 34.1 Each Party:
- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
  - (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

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

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

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

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

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

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

34.6 Nothing in this clause shall prevent the Authority:

- (a) disclosing any Confidential Information for the purpose of:
  - (i) the examination and certification of the Authority's accounts; or

- (ii) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

(b) disclosing any Confidential Information obtained from the Contractor:

- (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
- (ii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Agreement;

provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

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

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

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

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

34.9 The parties acknowledge that the Authority is obliged to disclose the provisions of this Contract in accordance with the Office of Government Commerce's Guidance Note of September 2010, except to the extent that any information contained within it is exempt from disclosure in accordance with FOIA. In determining whether any information is

exempt the Authority shall consult with the Contractor and shall take its reasonable concerns into consideration, provided that the Authority shall have the final decision in its absolute discretion. The Contractor shall co-operate and assist the Authority to publish this Contract in accordance with the Authority's obligation.

### **35 Freedom of Information**

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

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

- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within [two] Working Days of receiving a Request for Information;
- (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within [five] Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].

35.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and
- (b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

35.4 The Contractor acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA,

November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Contractor, or
- (b) following consultation with the Contractor and having taken its views into account.

35.5 The Contractor shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

35.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 35.4.

### **36 Security of Confidential Information**

36.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Contractor undertakes to maintain security systems approved by the Authority.

36.2 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under Clause 34. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

### **37 Publicity and Media**

37.1 Without prejudice to the Authority's obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).

37.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 37.1 by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 37.1 by its sub-contractors.

### **38 Security**

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

### **39 Intellectual Property Rights**

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

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

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
  - (b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.
- 39.8 At the termination of the Agreement the Contractor shall at the request of the Authority immediately return to the Authority all materials, work or records held, including any back-up media.
- 39.9 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

#### **40 Audit and the Audit Commission**

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

### **Part 6 – Control of the Contract**

#### **41 Assignment and Sub-Contracting**

- 41.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Agreement or any part of it without prior Approval. Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Agreement.
- 41.2 The Contractor shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- 41.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority within 2 Working Days of such request.

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

## **42 Waiver**

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

## **43 Variation of the Services**

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

## **44 Severability**

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

#### **45 Remedies in the Event of Inadequate Performance**

- 45.1 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Agreement by the Contractor, or the Contractor's performance of its obligations under the Agreement has failed to meet the requirement set out in the Specification Schedule, then the Authority may, without prejudice to its rights under clause 52 of the Agreement, do any of the following:
- (a) make such deduction from the Price to be paid to the Contractor as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide or performed inadequately;
  - (b) without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will be able to perform such part of the Services in accordance with the Agreement;
  - (c) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
  - (d) terminate, in accordance with clause 52, the whole of the Agreement.
- 45.2 The Authority may charge to the Contractor any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Authority or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 45.3 If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Authority and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense

remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

45.4 In the event that:

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

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

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

#### **46 Remedies Cumulative**

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

#### **47 Possible Extension of Term**

47.1 The client may seek to extend the term of this contract by 12 month, by mutual agreement of both parties..

### **Part 7 - Liabilities**

#### **48 Indemnity and Insurance**

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

48.2 The Contractor shall indemnify and keep indemnified the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or sub-contractors, or by any circumstances within its or their control.

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

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

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

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

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

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

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

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

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

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

48.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

48.9 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement. It shall be the responsibility of the Contractor to

determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 48.2.

48.10 Subject to the provisions of this Contract, the Contractor shall be responsible to the Authority for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor. The Contractor shall, as between itself and the Authority, be responsible for the selection of and pricing by all Contractor Related Parties. Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, nor the failure of the same shall, unless expressly stated in this Contract, relieve the Contractor of any of its obligations under this Contract or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

#### **49 Not Used**

49.1 Not Used

#### **50 Warranties and Representations**

##### **50.1 The Contractor warrants and represents that:**

- (a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Contractor;
- (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice;
- (c) all obligations of the Contractor pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence; and
- (d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.

## **Part 8 – Default, Disruption and Termination**

### **51 Termination on change of control and insolvency**

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

- (a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Agreement; or
- (b) the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or
- (c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
- (d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) any similar event occurs under the law of any other jurisdiction.

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

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

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

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

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

## **52 Termination on Default**

- 52.1 The Authority may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:
  - (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
  - (b) the Default is not, in the opinion of the Authority, capable of remedy;
  - (c) the Default is a material breach of the Agreement.
  - (d) the Agreement has been subject to substantial modification which would have required a new procurement procedure in accordance with section 72(9) Public Contracts Regulations 2015
  - (e) the Contractor has, at the time of contract award, been in one of the situations referred to in section 57(1) Public Contract Regulations 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or
  - (f) the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.
- 52.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be

unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Authority for any costs charged in connection with such Default of the Contractor.

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

### **53 Break**

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

### **54 Consequences of Termination**

- 54.1 Where the Authority terminates the Agreement under clause 52, or terminates the provision of any part of the Agreement under that clause 52, and then makes other arrangements for the provision of Services, the Authority shall be entitled to recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term or any Extension. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 52, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.
- 54.2 Where the Authority terminates the Agreement under clause 53, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under 53.
- 54.3 The Authority shall not be liable under clause 54.2 to pay any sum which:

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

## **55 Disruption**

- 55.1 The Contractor shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 55.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.
- 55.3 In the event of industrial action by the Staff or the Contractor's suppliers the Contractor shall seek the Authority's Approval to its proposals for the continuance of the performance of the Services in accordance with its obligations under the Agreement.
- 55.4 If the Contractor's proposals referred to in clause 55.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Agreement may be terminated by the Authority by notice in writing with immediate effect.

## **56 Recovery upon Termination**

- 56.1 Save as otherwise expressly provided in this Agreement and notwithstanding the provisions of;
  - (a) termination of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
  - (b) termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Authority under clause 13 (Standard of Work), 23 (Recovery of Sums Due), 27 (Prevention of Corruption), 33 (Data Protection Act), 34 (Confidentiality), 37 (Publicity and Media), 38 (Security), 39 (Intellectual Property Rights), 40 (Audit), 46 (Remedies Cumulative), 48 (Indemnity and Insurance), 49

(Professional Indemnity), 50 (Warranties and Representations), 52 (Termination on Default), 54 (Consequences of Termination), 56 (Recovery on Termination) and 58 (Governing Law).

56.2 At the end of the Term (and howsoever arising) the Contractor shall forthwith deliver to the Authority upon request all the Authority's Property (including but not limited to materials, documents, information, access keys) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Authority may recover possession thereof and the Contractor grants licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

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

## **57 Force Majeure**

57.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 6 Months, either Party may terminate the Agreement by notice in writing with immediate effect.

57.2 Any failure or delay by the Contractor in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

57.3 Clause 57 does not affect the Authority's rights under clause 56.

- 57.4 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause 57.2 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 57.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

## **Part 9 – Dispute and Law**

### **58 Governing Law**

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

### **59 Dispute Resolution**

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

Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

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

60.2 The Contractor shall ensure that all allegations, suspicions and incidents of abuse, harm or risk of harm to children and/or vulnerable adults or where there is concern about the behaviour of an individual are reported immediately to the Council's Representative and the Adult Social Care Team in respect of a vulnerable adult or the Children's Social Care Team in respect of a child. The Contractor's safeguarding policies and procedures should include active encouragement to staff in whistle blowing if aware of suspected abuse.

60.3 The Contractor shall ensure that children and/or vulnerable adults are safeguarded from any form of exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhumane or degrading treatment through

deliberate intent, negligent acts or omissions.

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

implementation and monitoring of the Contractor's safeguarding policies and procedures in accordance with the terms of this Agreement.

- 60.13 The Contractor shall ensure that it operates a recruitment and selection procedure which aligns with the Council's safer recruitment and disciplinary standards and which meets the requirements of legislation, equal opportunities and anti-discriminatory practice and ensures the protection of children and vulnerable adults

## **61 Whistleblowing**

**61.1** The Contractor shall:

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

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

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

[Authorised] Signatory

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

Director/Company Secretary

#### SPECIFICATION SCHEDULE

*[insert description of the Services to be supplied including, where  
appropriate, the Key Personnel, the Premises and the Quality Standards]*

## PRICING SCHEDULE

*[insert pricing provisions as appropriate]*

## MONITORING SCHEDULE

*[insert monitoring provisions as appropriate]*

In line with the Council's corporate objectives to monitor contracts and agreements in place to ensure best value is maintained, and also to ensure carbon reduction principles are embedded in all aspects of Council decision making, the Council seeks to establish quarterly contract management meetings;

### A.1

The following Key Performance Indicator (KPI') applies;

- (a) Quarterly contract meetings to address the following agenda items;

Contract Management Agenda	
1.	Introduction
2.	Minutes from previous meetings <ul style="list-style-type: none"><li>- outstanding issues</li></ul>
3.	Issues/challenges <ul style="list-style-type: none"><li>- customer issues/feedback</li></ul>
4.	Environmental, Health and Safety <ul style="list-style-type: none"><li>- Method statements &amp; risk assessments</li></ul>
5.	Carbon Reduction / Waste Management <ul style="list-style-type: none"><li>- Activity</li><li>- Monitoring</li><li>- Reporting</li></ul>
6.	Improving the contract <ul style="list-style-type: none"><li>- Opportunities</li><li>- Changes in legislation</li></ul>
7.	Any other business
8.	Next meeting

## COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

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