

PREFERRED SUPPLIER AGREEMENT
FOR
[]¹ SERVICES

Date: 2018

(1) [INSERT FULL NAME OF BID]

(2) [INSERT NAME OF SUCCESSFUL BIDDER]

¹ Insert a brief description of services, such as, Food Waste, Trade Waste, Dry Recycling and Residual Waste.

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PARTIES

- (1) [INSERT NAME] (Company Number [INSERT NUMBER] whose registered office is at [INSERT ADDRESS] (the '**Client**'); and
- (2) [INSERT NAME] (Company Number [INSERT NUMBER]) whose registered office is at [INSERT ADDRESS] (the '**Contractor**' which expression shall include successors in title and any permitted assignee).

Each referred to as a "party" and together the "parties".

BACKGROUND

- (A) The Client is [INSERT LOCATION]'s Business Improvement District that represents [INSERT NUMBER] businesses within the BID Area (as defined in Clause 1).
- (B) The Client has undertaken a procurement process for the Services (as defined in Clause 1) to be delivered for and on behalf of the Customers (as defined in Clause 1) in accordance with the terms of this Agreement.
- (C) The Contractor submitted the most competitive bid and has been appointed as the preferred supplier to provide the Services pursuant to this Agreement.
- (D) The Contractor shall provide the Services to any Customer as and when requested to do so by a Customer.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

ADR Notice	has the meaning given to it in clause 20.4;
Affiliate	means any entity that directly or indirectly controls, is controlled by or is under common control with, another entity, and in this context " control " means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;
Business Improvement District Area	means the area defined on the map set out in Schedule 2, and " BID Area " shall be construed accordingly;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday in Scotland;
Change Control Request	means a written notice prepared in accordance with Clause 11.4 served on the Contractor or the Client by the other party which requests a variation to the Agreement;

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Client Representative	means [insert job title and contact details] appointed in accordance with clause 8.1 (Contract Management and Reporting);
Consents	means all permissions, consents, approvals, certificates, permits, licences and authorisations of a Relevant Authority required for the performance of the Contractor's obligations under this Agreement;
Commencement Date	means [insert date];
Contract Price	the sums payable by the Customer to the Contractor as set out in Schedule 5 (Price Schedule);
Contract Year	means each consecutive period of 12 months commencing from the Commencement Date;
Contractor Manager	means [insert job title and contact details] appointed in accordance with clause 8.1 (Contract Management and Reporting);
Contractor Personnel	means all employees, officers, staff, other workers, agents and consultants of the Contractor, its Affiliates and any of their subcontractors who are engaged in the performance of the Services from time to time;
Contractor's Tender	the Contractor's Tender dated [insert date];
Customers	means a business located in the BID Area;
data controller	is the term used in clause 16 (Data Protection) and has the meanings given to it in the DPA or, from 25 May 2018, the GDPR;
data processor	is the term used in clause 16 (Data Protection) and has the meanings given to it in the DPA or, from 25 May 2018, the GDPR;
Data Protection Laws	means the Data Protection Act 1998 (until repealed) (" DPA "), the Data Protection Directive (95/46/EC) (until repealed) and, from 25 May 2018, the GDPR or any equivalent provision which may replace the GDPR following the formal political separation of the United Kingdom from the European Union; the Regulation of Investigatory Powers Act 2000; the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699); the Electronic Communications Data Protection Directive (2002/58/EC); the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003); and all applicable laws and regulations which may be in force from time to time relating to the processing of personal data and privacy, including where applicable the

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	guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction;
data subject	is the term used in clause 16 (Data Protection) and has the meanings given to it in the DPA or, from 25 May 2018, the GDPR;
Default	has the meaning given to it in clause 9.1;
Default Notice	means the notice prepared and issued by the Client in accordance with clause 9.3;
[Discount]	means the percentage discount to be applied to the Contract Price in accordance with clause 10.3 (Price);]
Environmental Permit	means any permit required and issued by the Permitting Authority in respect of any facilities used in the performance of the Services;
Estimate	has the meaning given to it in clause 11.4;
Force Majeure Event	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 that party, including flood; violent storm; pestilence; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding: <ul style="list-style-type: none"> a) any industrial action occurring within the Contractor's or any sub-contractor's organisation; or b) the failure by any sub-contractor to perform its obligations under any sub-contract
GDPR	General Data Protection Regulation ((EU) 2016/679);
Good Industry Practice	means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or any subcontractor under the same or similar circumstances;
Information Commissioner	is the term used in clause 16 (Data Protection) and has the meanings given to it in the DPA or, from 25 May 2018, the GDPR;
Irremediable Default	has the meaning given to it in clause 9.6;

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Irremediable Default Notice	has the meaning given to it in clause 9.7;
International Organisation	is the term used in clause 16 (Data Protection) and has the meanings given to it in the DPA or, from 25 May 2018, the GDPR;
Key Performance Indicators	means the key performance indicators detailed within Schedule 4 and “KPIs” shall be construed accordingly;
Laws	any applicable statute or any delegated or subordinate legislation, any enforceable community rights within the meaning of Section 2 of the European Communities Act 1972, duly applicable guidance, code of practice, direction, judgement or determination with which the Client and/or the Contractor is bound to comply;
New Contractor	any person contracted to provide services to the Client the same as or similar to the Services at any time in substitution for the Contractor or any subcontractor (in whole or in part);
Performance Location	means the location at which the Services shall be performed for the Customer;
Permitting Authority	means the relevant competent regulatory authority for the purposes of issuing an Environmental Permit;
personal data	is the term used in clause 16 (Data Protection) and has the meanings given to it in the DPA or, from 25 May 2018, the GDPR;
Policies	[INSERT IF RELEVANT]
Price Schedule	means the document set out in Schedule 5 to be used to calculate the Contract Price payable to the Contractor by a Customer pursuant to a Services Agreement;
processing	is the term used in clause 16 (Data Protection) and has the meanings given to it in the DPA or, from 25 May 2018, the GDPR;
Relevant Authority	means any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
Required Insurance	means: <ul style="list-style-type: none"> a) Employer's (Compulsory) Liability Insurance with a limit of indemnity of not less than [£5 million] in relation to each

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	<p>and every claim during each 12 month period in respect of claims arising from the Services;</p> <p>b) Public Liability Insurance with a limit of liability of not less than £10 million in relation to each and every claim during each 12 month period in respect of claims arising from the Services; and</p> <p>c) All other insurances required by Law.</p>
Representative	means employee, officer, authorised agent or contractor of a party;
Services	means the whole of the [INSERT DESCRIPTION²] services or any part of them to be provided by the Contractor pursuant to this Agreement which are necessary for the Contractor to undertake in order to comply with the Specification, the Service Delivery Plan and the other provisions of this Agreement;
Services Agreement	means the form of agreement set out in Schedule 6 of this Agreement to be used by the Contractor when delivering the Services to the Customer;
Service Delivery Plan	means the Contractor's proposals for the method of providing the Services to satisfy the requirements of the Specification as set out in Schedule 3;
Specification	means the requirements of the Client in respect of the Services as set out in Schedule 1;
Term	has the meaning set out in clause 2.1;
VAT	means value added tax, as defined in the Value Added Tax Act 1994;
Waste Management Licence	any integrated pollution prevention control consent or waste management licence or similar consent issued by the Scottish Environment Protection Agency (or other appropriate regulator) from time to time in respect of any facility, site or premises used in connection with the Services;
Waste Regulations Scotland	means the Waste (Scotland) Regulations 2012;

1.2 In this Agreement:

² Such as, trade waste, food waste, or dry recycling and residual waste.

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- 1.2.1 a reference to this Agreement includes its schedules, appendices and annexes (if any);
- 1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assignees;
- 1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assignees;
- 1.2.4 a reference to one gender includes reference to the other genders;
- 1.2.5 words in the singular include the plural and vice versa;
- 1.2.6 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.7 the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement;
- 1.2.8 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time;
- 1.2.9 Where there is any discrepancy, inconsistency or conflict between the provisions of the Agreement, the conflict shall be resolved according to the following order of priority:
 - (a) clauses 1 – 31 (inclusive); and
 - (b) Schedules 1 – 6 and the content of the schedules.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement commences on the Commencement Date and shall continue in force for a period of **[INSERT NUMBER]** Contract Years whereupon it shall automatically terminate, unless terminated earlier by the parties pursuant to clause 14 (Termination) (the **Term**).³

3. CONTRACTOR OBLIGATIONS

- 3.1 During the Term, the Contractor agrees to supply the Services in consideration of payment of the Contract Price, payable by the Customer pursuant to the Services Agreement, with all reasonable skill, prudence and foresight and in accordance with:
 - 3.1.1 the terms of the Agreement (including the Specification, the Service Delivery Plan and the KPIs);
 - 3.1.2 the Services Agreement;

³ Amend to incorporate right to extend the Agreement, if required.

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- 3.1.3 the requirements of all Consents (including the Waste Management Licences and Environmental Permits);
 - 3.1.4 Good Industry Practice;
 - 3.1.5 all applicable Laws; and
 - 3.1.6 all reasonable instructions of the Client Representative acting in good faith.
- 3.2 The Contractor shall, and shall procure that the Contractor Personnel shall at all times and in all respects:
- 3.2.1 **[comply with the Policies⁴];**
 - 3.2.2 co-operate with the Client in all matters arising under this Agreement or otherwise relating to the performance of the Services;
 - 3.2.3 use the Performance Location in an efficient manner and for the sole purpose of providing the Services;
 - 3.2.4 provide all information, documents, materials, data or other items necessary for the provision of the Services to the Client in a timely manner;
 - 3.2.5 inform the Client in a timely manner of any matters (including any health, safety or security requirements) which may affect the provision of the Services; and
 - 3.2.6 ensure that all tools, equipment, materials or other items used in the provision of the Services are suitable for the performance of the Services, in good condition and in good working order.
- 3.3 The Contractor shall ensure that it has sufficient, suitable, experienced and appropriately qualified Contractor Personnel to perform this Agreement.

4. CLIENT OBLIGATIONS

- 4.1 Subject to clause 7 (No Exclusivity), the Client shall advertise in accordance with clause 4.2 the availability of the Contractor to the deliver the Services to all Customers in accordance with this Agreement.
- 4.2 The Client shall advertise the Services to Customers by incorporating relevant details of the Services in newsletters issued to Customers by the Client, on the Client's website and through social media.

5. ORDERS AND SERVICES AGREEMENT

- 5.1 A Customer may at any time instruct the Contractor to deliver the Services at the Performance Location.
- 5.2 The Contractor shall perform the Services in accordance with the Services Agreement.

⁴ Retain where the Client has policies, such as a data protection policy, that it requires the Contractor to comply with when delivering the Agreement and the Services.

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- 5.3 No variation to the Services Agreement shall be agreed by the Contractor and any Customer unless such variation is expressly approved and agreed in writing by the Client.
- 5.4 No Services Agreement shall be entered into by the Contractor following the date on which notice is validly served pursuant to clause 14 (Termination) or the date on which the Agreement expires pursuant to clause 2.1 (Commencement and Duration).

6. HEALTH AND SAFETY

- 6.1 The Contractor shall ensure that all health and safety matters concerning the Agreement are dealt with in accordance with:

- 6.1.1 *[insert cross reference to section of Service Delivery Plan dealing with health and safety]*; and

- 6.1.2 the Health and Safety at Work etc Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons.

- 6.2 The Contractor shall

- 6.2.1 conduct the Services to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Client's Representative and the Contractor's Personnel;

- 6.2.2 accept full responsibility for the day-to-day operational aspects of health and safety while performing the Services;

- 6.2.3 inform the Client immediately of any breaches in health and safety law and regulation;

- 6.2.4 inform the Client immediately of any health and safety issues relating to the Client's health and safety responsibilities,

pertaining to the Agreement.

- 6.3 The Contractor shall throughout the Term conduct regular monitoring, reviews and audits of the *[insert cross reference to section of Service Delivery Plan dealing with health and safety]* and the arrangements in place for complying with the Service Delivery Plan.

7. NO EXCLUSIVITY

- 7.1 The Contractor acknowledges and agrees that;

- 7.1.1 it shall not have an exclusive right to deliver the Services to the Customers; and

- 7.1.2 the Client shall not and is not required to guarantee a number or a minimum number of instructions to be issued to the Contractor pursuant to clause 5.1 (Services Agreement).

8. CONTRACT MANAGEMENT AND REPORTING

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- 8.1 The Client shall appoint the Client Representative and the Contractor shall appoint the Contractor Manager to act as the main point of contact for the other party in respect of all day-to-day matters relating to the supply of the Services and this Agreement.
- 8.2 The parties shall ensure that the Client Representative and the Contractor Manager meet at [quarterly intervals] to discuss the progress being made in relation to the provision of the Services, the KPIs, any dispute which may arise between the parties and the performance of the Agreement generally.
- 8.3 Throughout the Term the Contractor shall supply to the Client Representative such information relating to the Services as is set out in the Specification at the times and frequencies set out therein.
- 8.4 The Contractor shall ensure that the Contractor Manager also provides a status report for submission to the Client on a [quarterly] basis detailing as a minimum:
- 8.4.1 [Number of Customers and type serviced;
 - 8.4.2 Weights of waste streams sent for recycling, recovery and disposal;
 - 8.4.3 End destinations of waste;
 - 8.4.4 Number of waste collections missed; and
 - 8.4.5 Performance against KPIs.^{5]}

9. REVIEW AND MONITORING OF PERFORMANCE

- 9.1 The Client Representative may investigate each case where the Contractor may have or appears to have failed, for whatever reason, to perform the Services in whole or in part in accordance with the provisions of the Agreement ("a Default").
- 9.2 Where the Client Representative is satisfied that in any particular case the Contractor is in Default it shall be entitled to instruct the Contractor to remedy the Default at its cost within such reasonable period as the Client Representative may determine by issuing a Default Notice in accordance with clause 9.3, unless the Default in the reasonable opinion of the Client Representative falls within clause 9.6 (Irremediable Default).
- 9.3 The Default Notice issued by the Client to the Contractor shall be in writing and specify in general terms:
- 9.3.1 The nature of the Default; and
 - 9.3.2 instructions to the Contractor to remedy the Default at its cost within such reasonable period as the Client Representative may determine.
- 9.4 The administrative costs together with the cost of re-inspection incurred by the Client in respect of each Default Notice issued shall be [INSERT SUM (indexed)] and such sums shall be payable to the Client by the Contractor within thirty (30) days of the date of any invoice issued by the Client. The parties agree the amounts of the deductions

⁵ Amend or add to list, as appropriate.

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stated in this clause constitute liquidated damages for administration and re-inspection and are not a penalty.

- 9.5 If the Contractor fails to remedy any Default which is the subject of a Default Notice in accordance with the time limits set out therein, the Client shall be entitled to:
- 9.5.1 engage another contractor as the preferred supplier for the Services and recover from the Contractor all costs and expenses associated therewith, including any administration costs; and/or
 - 9.5.2 invoke the termination provisions under clause 14.1 (Termination) where there is repeated failure to comply with the requirements of the Agreement.
- 9.6 The Client Representative may issue an Irremediable Default Notice to the Contractor where a Default may have or appears to have occurred that is not capable of being remedied ("**an Irremediable Default**").
- 9.7 The Irremediable Default Notice issued by the Client Representative to the Contractor shall specify:
- 9.7.1 The nature of the Irremediable Default; and
 - 9.7.2 Request written acknowledgement from the Contractor within 24 hours of the date of the Irremediable Default Notice that an Irremediable Default exists.
- 9.8 On expiry of the 24-hour notice period within the Irremediable Default Notice the Client shall be entitled to invoke the termination provisions under clause 14.1 (Contractor Default).
- 9.9 The administrative costs incurred by the Client in respect of each Irremediable Default Notice issued shall be [INSERT SUM (indexed)] and such sums shall be payable to the Client by the Contractor within thirty (30) days of the date of any invoice issued by the Client. The parties agree the amount of the deduction stated in this clause shall constitute liquidated damages for administration and are not a penalty.

10. PRICE

- 10.1 The Contract Price shall be payable by the Customer to the Contractor pursuant to a Services Agreement.
- 10.2 The parties agree there is no obligation on the Client to pay to the Contractor the Contract Price or any other payment detailed in the Price Schedule relating to the delivery of Services.
- 10.3 [The Discount shall apply where the Contractor delivers the Services to [INSERT NUMBER] Customers over and above the first [INSERT NUMBER] Customers in receipt of the Services.]
- 10.4 The Contract Prices are exclusive of VAT.
- 10.5 The Contractor may increase the Contract Prices in accordance with the mechanism provided for in the Price Schedule on each anniversary of the Commencement Date by giving the Client not less than twenty (20) Business Days' notice in writing.

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11. VARIATIONS

- 11.1 Either party has the right to propose a variation to the Agreement in accordance with this Clause 11.
- 11.2 If a party wishes to propose a variation to the Agreement, it shall serve a Change Control Request on the other party. No change shall be deemed to occur, and the Contractor shall not vary the Price Schedule, unless the procedures in this Clause 11 are complied with.
- 11.3 The Contractor shall accommodate any variation(s) required by the Client provided that it shall only be entitled to additional payment pursuant to this Agreement or the Services Agreement, as the case may be, for any agreed additional costs it incurs on the basis set out in this Clause 11.
- 11.4 The Change Control Request shall set out the variation to the Agreement required by the party in detail. A Change Control Request issued by the Client shall request a cost estimate prepared in accordance with clause 11.6 (the "**Estimate**") of the costs arising as a direct result of the variation.
- 11.5 The Contractor shall provide the Client with the Estimate within ten (10) Business Days of the receipt or issue (as the case may be) of the Change Control Request or such longer period as may be agreed by the parties.
- 11.6 The Estimate shall include a statement of:
- 11.6.1 the impact of the proposed variation on the provision of the Services;
 - 11.6.2 any amendment required to this Agreement to accommodate the proposed variation;
 - 11.6.3 the overall part year and/or full year cost of, or savings from, implementing the proposed variation; and
 - 11.6.4 any other information reasonably requested by the Client or appearing to the Contractor to be relevant.
- 11.7 As soon as practicable after the Contractor provides the Client with the Estimate, the Client and the Contractor shall meet to discuss and agree any issues arising from the Change Control Request or the Estimate.
- 11.8 The Parties shall endeavour to agree the terms of the Estimate. In the event the Parties cannot agree any part of the content of the Estimate within a reasonable time of the meeting under Clause 11.7 then the Change Control Request shall be withdrawn by the party that issued the Change Control Request.
- 11.9 As soon as practicable after any part of the contents of the Estimate have been agreed in accordance with Clause 11.8 the Client shall:
- 11.9.1 confirm in writing that it wishes to proceed with the Change Control Request (or that part of it which has been agreed or determined as above); or
 - 11.9.2 withdraw the Change Control Request (or the relevant part) or require the Contractor to withdraw the Change Control Request (or the relevant part) as the case may be.

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- 11.10 If the Client confirms that it wishes to proceed with the Change Control Request, the Agreement shall be amended in accordance with Clause 23 (Variations). The increased cost of, or savings from, implementing the variation (as agreed or determined) shall be reflected in the Price Schedule.
- 11.11 If the Client has not confirmed or withdrawn the Change Control Request within twenty (20) calendar days of the date of the agreement in accordance with Clause 11.8 then the Change Control Request shall be deemed to be withdrawn or refused, as the case may be, by the Client.
- 11.12 The Client shall not be liable for any costs incurred by the Contractor in implementing the procedures pursuant to this Clause 11.

12. FORCE MAJEURE

- 12.1 If either party is delayed or hindered in or prevented from performing any of its obligations under the Agreement by a Force Majeure Event then, so long as that Force Majeure Event continues, that party shall be excused from performance of such obligation to the extent that party is so delayed, hindered or prevented.
- 12.2 On the occurrence of a Force Majeure Event, the affected party shall notify the other party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected party and any action proposed to mitigate its effect.
- 12.3 As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Agreement.
- 12.4 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under the Agreement. Following such notification the Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 12.5 Neither party shall be deemed to be in breach of the Agreement, or otherwise be liable to the other, by reason of any delay or failure in performance of any of its obligations under the Agreement, to the extent that the delay or failure is caused by a Force Majeure Event relating to it and time for performance shall be extended accordingly.
- 12.6 For so long as the Contractor's obligations are suspended as a result of a Force Majeure Event the Client shall be entitled to make alternative arrangements for the provision of the Services or part thereof.

13. WARRANTIES AND ACKNOWLEDGEMENTS

- 13.1 The Contractor warrants and represents to the Client that:
 - 13.1.1 the Contractor has the full capacity and authority to enter into and to perform each of its obligations under the Agreement;
 - 13.1.2 the Agreement is executed by duly authorised representatives of the Contractor;

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- 13.1.3 that the information supplied in the Contractor's Tender is true and accurate; and
 - 13.1.4 there are no material facts or circumstances in relation to the financial position or operational constitution of the Contractor which have not been fully and fairly disclosed to the Client and which if disclosed might reasonably have been expected to affect the decision of the Client to enter into the Agreement.
- 13.2 The Contractor shall be deemed to have:
- 13.2.1 gathered all information necessary to perform its obligations under the Agreement; and
 - 13.2.2 satisfied itself as to the nature and extent of the risks assumed by it under the Agreement and the accuracy of the rates and prices it has stated in the Price Schedule.

14. TERMINATION

- 14.1 Without affecting any other right or remedy available to it, the Client may terminate this Agreement with **[immediate effect]** by giving written notice to the Contractor if the Contractor:
- 14.1.1 Commits a breach of any of its obligations under this Agreement which materially and adversely affects the performance of the Services;
 - 14.1.2 Commits an Irremediable Default or (if a Default is remediable) fails to remedy that breach within a period of **[fourteen 14]** days after being notified in writing to do so in accordance with clause 9 (Review and Monitoring of Performance);
 - 14.1.3 Makes an assignation of the Agreement in breach of Clause 22 (Assignation)
 - 14.1.4 Repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
 - 14.1.5 becomes bankrupt, or makes a composition or arrangement with its creditors, or has an order in respect of its company for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;
 - 14.1.6 has a winding up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed;
 - 14.1.7 has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed;
 - 14.1.8 has an administrative receiver, as defined in the Insolvency Act 1986, appointed; or
 - 14.1.9 has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in, or subject to, the floating charge.

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- 14.2 If a Force Majeure Event prevents either party from performing its obligations under the Agreement in any material respect for a period of 90 consecutive days then provided the notification requirements set out in clause 12 (Force Majeure) have been complied with, without prejudice to any accrued rights or remedies under the Agreement, either party may terminate the Agreement by giving 30 days written notice to the other party.

15. CONSEQUENCES OF TERMINATION

- 15.1 On termination or expiry of the Agreement all Service Agreements shall automatically terminate.

15.2 [Where the Agreement is terminated in accordance with clause 14.1 (Termination) and the Client makes alternative arrangements for the provision of the Services, the Client shall be entitled to recover from the Contractor the costs of up to [INSERT FIGURE] for making those other arrangements.]

- 15.3 Where the Agreement is terminated in accordance with clause 14.2 (Termination), the costs arising as a result of the termination shall be borne equally between the Parties.

- 15.4 The following clauses shall remain in force following termination: clause 1.1 (Definitions and Interpretation); clause 14 (Termination); clause 15 (Consequences of Termination); clause 16 (Data Protection); clause 18 (Insurance); clause 19 (Indemnities and Limitations on Liability); clause 20 (Dispute Resolution); clause 21 (Confidentiality); clause 26 (Notices); clause 28 (Duty to Co-operate); and clause 30 (Governing Law).

- 15.5 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

16. DATA PROTECTION

- 16.1 Each party agrees that, in the performance of its respective obligations under this Agreement:

16.1.1 it shall comply, and procure that its Affiliates, Representatives and/or sub-processors (as applicable) of it or any of its Affiliates shall comply, with all applicable Data Protection Laws; and

16.1.2 it shall not by any act or omission cause the other party (or any other person) to be in breach of any requirements of the Data Protection Laws.

- 16.2 The parties agree that the Client is the data controller in respect of any personal data that the Contractor processes in the course of its appointment as the preferred supplier to deliver the Services pursuant to this Agreement (other than business contact data processed by the Contractor to allow it to comply with the Agreement and deliver the Services).

- 16.3 Accordingly, the Contractor agrees that it shall:

16.3.1 only carry out processing of personal data in respect of which the Client is the data controller on the Client's instructions from time to time (however if any applicable law, order or regulation requires the Contractor to process personal data other than in accordance with the Client's instructions the Contractor shall notify the Client of any such requirement before processing

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- such personal data, unless the applicable law, order or regulation prohibits such notification on important grounds of public interest);
- 16.3.2 implement and maintain appropriate technical and organisational measures to protect personal data against (without limitation) unauthorised or unlawful processing and accidental destruction or loss, so as to protect applicable data subjects' rights in accordance with, and enable the Client to comply with its obligations under, applicable Data Protection Laws;
 - 16.3.3 where personal data is lost, damaged, destroyed or subject to unauthorised access, immediately notify the Client in writing and take all steps required by Data Protection Laws with respect to notification and remediation;
 - 16.3.4 include in any contract with any subcontractors who shall process such personal data directly or indirectly on the Client's behalf provisions which are at least equivalent to those in this clause 16.3, and the Client hereby consents to the Contractor's use of such subcontractors in accordance with this clause 16.3;
 - 16.3.5 as soon as reasonably practicable refer to the Client any requests, notices or other communication from data subjects, the Information Commissioner or any other law enforcement authority, for the Client to resolve; and
 - 16.3.6 promptly make available (and shall procure that its Affiliates, Representatives and/or sub-processors (as applicable) of it or any of its Affiliates shall make available) to the Client such information as is reasonably required to demonstrate the parties' compliance with their respective obligations under the Data Protection Laws and / or this clause 16.3, and allow for, permit and contribute to audits, including inspections, by the Client (or another auditor mandated by the Client) for this purpose at the Client's request from time to time.
- 16.4 The Contractor acknowledges and agrees that it shall remain fully liable to the Client under this Agreement for all the acts and omissions of each subcontractor appointed by it in accordance with clause 16.3.4 as if they were the Contractor's own actions.
 - 16.5 The Client acknowledges and agrees that the Contractor may be required to transfer personal data which it processes on the Client's behalf to countries outside the European Economic Area (which shall be deemed to include the United Kingdom regardless of any formal separation of the United Kingdom from the rest of the European Union) or to an International Organisation. Subject to the Contractor ensuring that any such transfer will be undertaken in accordance with the applicable Data Protection Laws, the Client hereby consents to the Contractor transferring such personal data outside the European Economic Area and/or to an International Organisation (as applicable).
 - 16.6 The Contractor shall notify the Client immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Contractor's obligations under applicable Data Protection Laws. Such notice shall set out full details of the circumstances concerning such breach or potential breach.
 - 16.7 For the avoidance of doubt, nothing in this Agreement relieves either Party of any responsibilities or liabilities under Data Protection Laws.

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17. [INTELLECTUAL PROPERTY]

The Contractor shall not in connection with the performance of the Services use, manufacture, supply or deliver any process, article, matter or thing which would be an infringement of Intellectual Property Rights.^{6]}

18. INSURANCE

- 18.1 The Contractor shall during the Term of the Agreement take out and maintain the Required Insurances.
- 18.2 The Contractor shall notify the Client without delay should it be unable for any reason to maintain such Required Insurances, in whole or in part, in order that the parties may discuss means of best protecting their respective positions in the absence of such insurance.
- 18.3 The Contractor shall as and when reasonably required by the Client provide to the Client written confirmation from its insurance brokers of such current Required Insurances.
- 18.4 No party to the Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its powers) permit anything to occur in relation to it, which would, or is likely to entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.

19. INDEMNITY AND LIMITATION ON LIABILITY

- 19.1 The Contractor shall indemnify and keep indemnified the Client against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of contract or breach of Law arising out of or in connection with any act or omission of the Contractor or its Representatives under the Agreement.
- 19.2 An indemnity by either party under any provision of the Agreement shall be without limitation to any indemnity by that party under any other provision of the Agreement.
- 19.3 The Contractor shall not be obliged to indemnify the Client:
- 19.3.1 if and to the extent the claim arises as a result of the Contractor acting on the express instructions of the Client or its Representative (which shall not include anything contained in the Agreement) in its capacity as a counterparty to the Agreement; and
 - 19.3.2 to the extent that the claim is caused by the negligence or willful misconduct of the Client or its Representative or a breach of the Agreement by the Client or its Representative.
- 19.4 The aggregate liability of the Contractor whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the

⁶ Clause to be reviewed on a project specific basis. Drafting will depend upon the BID's requirements.

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Agreement shall except under clause 19.8 where its liability shall be unlimited in no event exceed [ten million pounds (£10,000,000)][(indexed)].

- 19.5 Notwithstanding any other provision of the Agreement, the parties shall not be liable to the other party to the extent permitted by Law in connection with the Agreement and/or any documents entered into pursuant to or in connection with the Agreement for any indirect, special or consequential loss or damage which includes, but is not limited to, any loss of profit, revenue, anticipated savings, use, contract, goodwill or business opportunities (whether direct or indirect).
- 19.6 The aggregate liability of the Client whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Agreement shall except under clause 19.8 where its liability shall be unlimited in no event exceed [one million pounds (£1,000,000)][(indexed)].
- 19.7 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to the Agreement.
- 19.8 Notwithstanding any other provision of the Agreement neither party limits or excludes its liability for:
- 19.8.1 fraud or fraudulent misrepresentation;
 - 19.8.2 loss of or damage to property; or
 - 19.8.3 death or personal injury caused by its negligence.

20. DISPUTE RESOLUTION

- 20.1 Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with this clause 20.
- 20.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 20.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 20.3.1 Within seven (7) days of service of the notice, the Client Representative and Contractor Manager shall meet to discuss the dispute and attempt to resolve it; and
 - 20.3.2 If the dispute has not been resolved within seven (7) days of the first meeting held in accordance with clause 20.3.1, then the matter shall be referred to the chief executives (or persons with equivalent seniority) within each party. The chief executives (or equivalent) shall meet within seven (7) days to discuss the dispute and attempt to resolve it.
- 20.4 If the chief executives (or equivalent) are unable to resolve the dispute within fourteen (14) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party may serve notice in writing (**ADR Notice**) to the other party to the

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dispute, requesting mediation. A copy of the ADR Notice should be sent to CEDR. The mediation will start not later than twenty-eight (28) days after the date of the ADR Notice.

- 20.5 No party may commence any court proceedings under clause 30 (Governing Law) in relation to the whole or part of the dispute after service of the ADR Notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 20.6 If the dispute is not resolved by mediation, or either party fails to participate or continue to participate in the mediation, or the mediation terminates, the dispute shall be finally resolved by the courts of Scotland in accordance with clause 30 (Governing Law).

21. CONFIDENTIALITY

- 21.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the Agreement, business, affairs, Customers or customers, clients or suppliers of the other party, except as permitted by clause 21.2.
- 21.2 Clause 21.1 shall not apply to:
 - 21.2.1 any disclosure of information that is reasonably required by persons engaged in the performance of its obligations under the Agreement;
 - 21.2.2 any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of clause 21.1;
 - 21.2.3 any disclosure which is required by Law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or Regulatory Authority having the force of Law; and
 - 21.2.4 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party.
- 21.3 Where disclosure is permitted under paragraph 21.2 the recipient of the information shall be made aware of the confidential nature of the information and shall be subject to appropriate obligations of confidentiality.

22. ASSIGNATION

- 22.1 The Contractor may not assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the Client's prior written consent (such consent not to be unreasonably withheld or delayed).
- 22.2 The Client shall be entitled to assign, novate or transfer any right or obligation under this Agreement, in whole or in part.

23. VARIATION

- 23.1 No variation to this Agreement shall be effective unless in writing and signed by the parties.

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24. WAIVER

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

25. RELATIONSHIP OF THE PARTIES

- 25.1 The Contractor shall not be or be deemed to be an agent of the Client and the Contractor shall not hold itself out as having authority or power to bind the Client in any way.
- 25.2 Nothing in the Agreement shall be construed as creating a partnership or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

26. NOTICES

Any notice to be given by the Contractor shall be deemed to be duly given if it is delivered by hand or sent by registered post or recorded delivery to the Client at its registered office and any notice given by the Client to the Contractor shall be deemed to be duly given if it is delivered by hand or sent by registered post or recorded delivery to the above-mentioned address of the Contractor and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received 48 hours after being posted.

27. ENTIRE AGREEMENT

- 27.1 The Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt within it and supersedes, cancels and nullifies any previous agreement between the parties whether written or oral, in relation to such matters.
- 27.2 Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Agreement. The only remedy available to either party in respect of any such statements, representation, warranty, or understanding shall be for breach of contract under the terms of the Agreement.
- 27.3 Nothing in this clause 27 shall operate to exclude any liability for fraudulent misrepresentation.

28. DUTY TO COOPERATE

- 28.1 The Contractor shall take all reasonable steps and co-operate fully with the Client and any New Contractor so that any continuation of the Service is achieved with the minimum of disruption.

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28.2 Prior to the termination or expiry of the Agreement, the Contractor shall (and shall procure that its subcontractors will) comply with all reasonable requests of the Client to provide information relating to operating and maintaining the Services.

29. ILLEGALITY

29.1 In the event that any part of the Agreement shall become or be declared void, invalid, illegal or unenforceable for any reason whatsoever including by reason of any Law or any decision of a Court or Regulatory Authority having jurisdiction over the parties or the Agreement, the parties hereby expressly agree that the remaining parts and provisions of the Agreement shall continue in full force and effect with such amendments to ensure that the balance of obligation remains so far as possible the same as under the Agreement or as may be agreed between the parties.

30. GOVERNING LAW

The construction, validity and performance of this Agreement shall be governed by the law of Scotland and the parties agree to submit to the non-exclusive jurisdiction of the Scottish courts.

31. THIRD PARTY RIGHTS

The parties to this Agreement do not intend that any of its terms shall be enforceable by any third party pursuant to the Contracts (Third Party Rights) (Scotland) Act 2017.

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IN WITNESS WHEREOF this agreement is executed as follows:

For and on behalf of [NAME OF CLIENT] Limited:

..... signature of witness signature of director
..... full name of witness (print) full name of director (print)
..... date of signing
..... address of witness place of signing

For and on behalf of [NAME OF CONTRACTOR] Limited:

..... signature of witness signature of director
..... full name of witness (print) full name of director (print)
..... date of signing
..... address of witness place of signing

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SCHEDULE 1

This is the Schedule 1 referred to in the foregoing agreement made between **[NAME OF CLIENT]** Limited and **[NAME OF CONTRACTOR]** Limited

SPECIFICATION

[to be inserted]

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SCHEDULE 2

This is the Schedule 2 referred to in the foregoing agreement made between **[NAME OF CLIENT]** Limited and **[NAME OF CONTRACTOR]** Limited

BID AREA

[to be inserted]

SCHEDULE 3

This is the Schedule 3 referred to in the foregoing agreement made between **[NAME OF CLIENT]** Limited and **[NAME OF CONTRACTOR]** Limited

SERVICE DELIVERY PLANS

[to be inserted]

SCHEDULE 4

This is the Schedule 4 referred to in the foregoing agreement made between [NAME OF CLIENT] Limited and [NAME OF CONTRACTOR] Limited

KEY PERFORMANCE INDICATORS

[to be inserted]

SCHEDULE 5

This is the Schedule 5 referred to in the foregoing agreement made between **[NAME OF CLIENT]** Limited and **[NAME OF CONTRACTOR]** Limited

PRICE SCHEDULE

[to be inserted]

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SCHEDULE 6

This is the Schedule 6 referred to in the foregoing agreement made between **[NAME OF CLIENT]** Limited and **[NAME OF CONTRACTOR]** Limited

SERVICES AGREEMENT

[to be inserted]