**DATED 2014**

**NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL** (1)

and

**[TBC]** (2)

|  |
| --- |
| **AGREEMENT FOR REMOVAL OF ASBESTOS CONTAINING MATERIALS** |

**THIS AGREEMENT** made the day of 2014

**BETWEEN:**

1. **NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL** of Council Offices, Coalville, Leicestershire LE67 3FJ (‘the Council’); and
2. **[ ]** a company registered in [ ] with Company Number [ ] whose Registered Office is at [ ] (“the Contractor”),

each a “party” and together the “parties”.

**WHEREAS:**

1. The Council is seeking the services of a licensed asbestos removal contractor to carry out the removal of identified asbestos containing materials from the internal areas and the external envelope of its managed domestic housing stock.

(B) The Contractor submitted the most economically advantageous tender.

(C) The Contractor has been appointed to provide such Services having supplied the winning bid and shall provide the Services in accordance with the provisions of this Agreement.

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement unless the context requires the following shall have the meanings set out below:

**“Authorised Officer”** means an authorised representative of the Council that has day to day management of this Agreement.

**“Change of Control”** means in relation to the Contractor, either: (a) the transfer or disposal of 50% or more of the legal, beneficial or equitable interest in the shares of the Contractor (and "equitable interest" includes control over the exercise of voting rights conferred by those shares and/or control over the rights to appoint or remove directors or the rights to dividends); or (b) any other arrangements which have the same or similar effect to that noted in (a) above.

**“Commencement Date”** means the date of this Agreement.

**“Confidential Information”** All Personal Data and any information, however it is conveyed, that relates to the business affairs, developments, trade secrets and knowhow of the parties.

**“Contract Manager”** means an authorised representative of the Contractor that has day to day management of this Agreement.

**“Contract Period”** means the length of time that this Agreement for the provision of the Services shall continue for and as detailed in Schedule 1.

**“Control”** means the possession of or exercise by a person or other legal entity that possesses, directly or indirectly, the power to direct or alter the direction of the management and policies of the Contractor.

**“Data Controller”** shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time.

**“Data Processor”** shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time.

**“Data Subject”** shall have the same meaning as set out in the Data Protection Act 1998, as amended from time to time.

**“Equipment”** means any equipment, including machinery (but excluding the Technology) used by the Contractor in the provision of the Services.

**“FOIA”** means the Freedom of Information Act 2000.

**“Force Majeure Event”** means flood, storm, fire, war, terrorist act, riot, strike or other industrial action, other than the industrial action of the employees, sub-contractors or agents of the Contractor or sequestration.

**“Good Industry Practice”** means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of technology and/or services (as the context dictates) similar to the Services and the Technology and/or under the same or similar circumstances as those applicable to this Agreement.

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

**“Intellectual Property Rights”** means all copyright, patents or patent rights, registered and unregistered design rights, trade marks, service marks and all other intellectual or industrial property rights wherever in the world enforceable.

**“Law”** means all statutes, statutory instruments, regulations, byelaws, rules, judicial rulings and orders made under any statute, directive or by any competent legislative or judicial body in England and Wales.

**“Price”** means the price to be paid by the Council to the Contractor for the provision of the Services and as detailed in the Tender.

**“Persistent Breach”** means a particular breach which occurs 3 times or more times in any 1 month period***.***

**“Personal Data”** shall have the same meaning as set out in the Data Protection Act 1998.

**“Request for Information”** means a request for information or an apparent request under FOIA or the Environmental Information Regulations 2004.

**“Schedules”** means any Schedule attached to and forming part of this Agreement.

**“Services”** means the services to be provided by the Contractor to the Council as detailed in and in accordance with the Specification and the Tender.

**“Specification”** means the Council’s specification as set out in Schedule 2.

**“Tender”** means the Contractor’s successful tender to the Council for the removal and disposal of asbestos containing materials and as set out in Schedule 3.

**“Working Days”** any day other than a Saturday, Sunday or public holiday in England and Wales.

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

1.3A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

1.4 Words importing the singular should if the context requires have the plural meaning and vice versa.

1.5 Words importing the masculine include the feminine and neuter.

1.6 Headings are for ease of reference only and shall not affect the interpretation of this Agreement.

1.7 The words ‘include’, ‘includes’, ‘including’ are to be construed as if they were immediately followed by the words ‘but not limited to’.

1.8 In the event of any conflict between the clauses of this Agreement and its Schedules, the Schedules will take precedence.

**2. TERM**

2.1 This Agreement shall commence on the Commencement Date and unless otherwise terminated in accordance with this Agreement, shall continue for the Contract Period.

2.2 If any part of the Services and the Contract Period includes an option to extend and the Council intends to take up that option, the Contractor shall be notified in writing not less than four months prior to the commencement of the extension. If no notification is issued this Agreement shall automatically expire after the Contract Period. Any extension period created pursuant to the notification procedure in this clause 2.2 shall form part of the Contract Period for the purposes of the other provisions of this Agreement.

**3. PRICE AND PAYMENT**

3.1 In consideration of the Contractor’s proper performance of the Services, the Council shall pay the Price for the Services to the Contractor.

3.2 The Price shall be paid at such times and in such amounts as shall be in accordance with the Tender or as may be agreed in writing by the parties from time to time. The Contractor shall submit itemised invoices to the Council at the relevant times.

3.3 The Council shall pay any undisputed sums due to the Contractor under such invoice within thirty (30) days of receipt of the invoice.

3.4 The Council reserves the right to withhold payment of any part of the Price without payment of interest to the extent the Contractor has either failed to provide the Services at all or has provided the Services inadequately in the opinion of the Council. No payment shall be made in such circumstances unless or until the Services have been reinstated to the Council’s satisfaction.

3.5 The Council may, but will not be obliged to, at any time without notice to the Contractor, set off any liability of the Council to the Contractor against any liability of the Contractor to the Council howsoever arising. The Council’s rights under this clause shall be without prejudice to any other rights or remedies available to the Council under this Agreement or otherwise.

3.6 Any overdue sums will bear interest from the final date for payment until payment is made at 3%. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.

3.7 The Contractor agrees to use all reasonable endeavours to pay its sub-contractors and agents, engaged in relation to the performance of this Agreement, promptly and in any event no later than 30 days from the latter of the Contractor’s receipt of such sub-contractors’ or agents’ invoices or receipt of payment from the Council under this Agreement.

**4. PERFORMANCE AND STANDARD OF SERVICES**

4.1 In the delivery of the Services, time shall be of the essence, including in relation to the commencement of the provision of the Services within the time agreed or on a specified date.

4.2 The Contractor will provide the Services:

4.2.1 in a proper, skilful and workmanlike manner;

4.2.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence;

4.2.3 to the reasonable satisfaction of the Authorised Officer;

4.2.4 taking every reasonable precaution to safeguard the Council’s property entrusted to the care of the Contractor;

4.2.5 such that the Council’s reputation will not be damaged or be at risk;

4.2.6 in accordance with the Specification, the Tender and otherwise in accordance with the terms of this Agreement; and

4.2.7 in accordance with Law and Good Industry Practice.

4.3 The Council shall have the right to observe, monitor and audit the Contractor’s performance of the Services.

4.4 The Contractor will procure that to the extent that any goods, Equipment, the Technology and/or consumables are provided as part of the Services they will:

4.4.1 be free from defects in design, material and workmanship; and

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

4.5 If the Contractor at any time becomes aware of any material matter which may affect the performance of the Services in accordance with this Agreement, the Contractor shall inform the Council immediately.

4.6 Without prejudice to the Council’s rights to terminate in accordance with this Agreement, if any of the Services supplied are not in accordance with this Agreement, the Council shall be entitled to:

4.6.1 require the Contractor to provide replacement services in accordance with this Agreement as soon as reasonably practicable and in any event within fourteen (14) days of being requested to do so; and/or

4.6.2 require payment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement services.

4.7 The Council retains the Contractor for the performance of the Services on a non-exclusive basis.

4.8 The Contractor shall provide all Equipment necessary for the provision of the Services.

4.9 Title to all Equipment used in the provision of the Services shall remain with the Contractor and shall be at the Contractor’s own risk. The Council shall have no liability for any loss of or damage to the Equipment unless the Contractor can demonstrate that such loss or damage was caused by the negligence of the Council, including its staff or agents.

4. 10 Delivery and removal of the Equipment will be at the cost of the Contractor.

4.11 The Contractor shall maintain all Equipment in a safe and serviceable condition.

**5. CONTRACT MANAGER**

5.1 The Contractor shall employ a competent and authorised Contract Manager to act on behalf of the Contractor for all purposes connected with this Agreement.

5.2 The Contractor shall notify the Council promptly following the Commencement Date of the identity of the Contract Manager and shall give written notice promptly to the Council of any change regarding the Contract Manager.

**6. CONTRACTOR’S STAFF**

6.1 The Council reserves the right to refuse to admit to, or to withdraw permission to remain on, any premises occupied by the Council:

6.1.1 any member of the Contractor’s staff; or

6.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be in the reasonable opinion of the Council, undesirable. Any such decision by the Council shall be final and conclusive.

6.2 When engaged within the boundaries of the Council’s premises, the Contractor’s staff shall comply with such rules, regulations and policies as may be in place from time to time for the conduct of personnel when at that establishment.

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

6.4 Any additional costs of the Contractor resulting from any action of the Council under this clause 6 shall solely be the responsibility of the Contractor. For the avoidance of doubt the contractor shall not be relieved of any obligation under this Agreement as a result of such action by the Council.

**7. STATUTORY REQUIREMENTS**

7.1 The Contractor shall comply with all relevant health and safety legislation and all health and safety policies issued by the Council from time to time in the provision of the Services.

7.2 The Contractor shall comply with all obligations under the Human Rights Act 1998.

7.3 The Contractor shall comply with all Council policies notified by the Council to the Contractor from time to time including those in relation to:

7.3.1 information security; and

7.3.2 whistleblowing and/or confidential reporting.

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

7.5 The Contractor shall comply with all relevant legislation relating to its staff however employed including the compliance in law of the ability of staff to work in the United Kingdom.

7.6 If the Contractor has a finding against it in relation to its obligations under clauses 7.4 or 7.5 it will provide the Council with:

7.6.1 details of the finding; and

7.6.2 the steps taken by the Contractor to remedy the situation.

7.7 This clause 7 shall be without prejudice to the generality of the Contractor’s duty to perform the Services in accordance with Law.

**8. INSURANCE**

8.1 The Contractor shall maintain all insurances necessary in accordance with Law and Good Industry Practice and no less than the following:

8.1.1 Employer’s liability insurance with a limit of indemnity of no less than £10,000,000 (ten million pounds);

8.1.2 Public liability insurance with a limit of indemnity of no less than £10,000,000 (ten million pounds); and

8.1.3 Professional indemnity insurance with a limit of indemnity of no less than £1,000,000 (one million pounds).

8.2 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and upon request, provide details of such insurances to the reasonable satisfaction of the Authorised Officer and ensure that all premiums relating to such insurances have been paid.

8.3 Neither party seeks to exclude or limit its liability for:

8.3.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party’s negligence);

8.3.2 fraudulent misrepresentation; or

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

8.4 Except where specifically provided, neither party shall be liable to the other for any indirect or consequential loss (including loss of profit and pure economic loss) however caused.

8.5 The Contractor shall indemnify the Council in full and on demand in relation to any costs, claims, liabilities, damages or losses (including without limitation any losses or damages to the real or personal property of the Council or any third party and any third party claims in relation to Intellectual Property Rights or injury claimed by any third party and against all liabilities awarded against or incurred by the Council (including legal expenses)) which relate to or arise indirectly or directly from the performance or non-performance, negligence, defect, fault, default or omission of the Contractor in providing the Services, the Technology or the Equipment and any termination of this Agreement arising from the default of the Contractor under clause 9.1.

8.6 The Council’s liability under this contract in relation to any breach, default or arising under contract (including indemnity) tort or any other legal theory shall be limited, subject to clause 8.3, to the Price actually paid under this Agreement as at the date of the event giving rise to the liability.

**9. TERMINATION**

9.1 The parties agree that any of the following circumstances constitute a material breach of this Agreement and the Council may by notice in writing terminate this Agreement forthwith as a consequence of such material breach:

9.1.1 the Contractor is convicted of a criminal offence; or

9.1.2 the Contractor has committed a material breach of the obligations under this Agreement and such breach is incapable of remedy or has not been remedied within ten (10) working days of written notice from the Council (and without limitation the following clauses will not be capable of remedy, Clause 16 (Bribery and Corruption), law, Clause 9.1.3 (Change of Control), Clause 8 (Insurance), Clause 7 (Statutory Requirements) will not be capable of remedy); or

9.1.3 there is a Change of Control of the Contractor without the prior written consent of the Council; or

9.1.4 the Contractor becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal for voluntary arrangement approved in accordance with the Insolvency Act 1986; or

9.1.5 the Contractor has an application made or notice of intention is given under the Insolvency Act 1986 to appoint an administrative receiver or administrator or an administrative receiver or administrator is appointed; or

9.1.6 the Contractor has a winding-up order made, or a resolution for voluntary winding-up passed (except for the purposes of amalgamation or reconstruction); or

9.1.7 the Contractor has a provisional liquidator, receiver or manager appointed; or

9.1.8 the Contractor ceases to carry on the whole of its business or threatens to cease the same or becomes unable to pay its debts within the meaning of Section 123 Insolvency Act 1986, or if the Council reasonably believes that any such events may occur; or

9.1.9 the Contractor has possession taken by or on behalf of the holders of any debentures secured by a floating charge, or property comprised in or subject to a floating charge; or

9.1.10 the Contractor undergoes an insolvency event under the laws of the state in which the Contractor is established, if not England and Wales; or

9.1.11 there is a risk or a reasonable belief held by the Council that there is a risk that reputational damage to the Council will occur as a result of this Agreement continuing; or

9.1.12 the Contractor commits a Persistent Breach of this Agreement; or

9.1.13 where the Contractor commits more than one minor breach of this Agreement, the Council may elect to treat such minor breaches cumulatively as a Persistent Breach.

9.2 Neither party shall have the right to terminate this Agreement otherwise than in accordance with the express terms set out in this Agreement.

9.3 Any breach of this Agreement will be a material breach if it has an adverse effect on the performance of the Services.

**10. DISPUTE RESOLUTION PROCEDURE**

10.1 If a dispute arises between the Council and the Contractor in connection with this Agreement the parties shall use reasonable endeavours to resolve such dispute by means of a prompt discussion at an appropriate managerial level.

10.2 If a dispute is not resolved within ten (10) Working Days of referral under clause 10.1 then either party may refer it to the Chief Executive or appropriately senior, nominated officer of each party for resolution who shall meet for discussions within ten (10) Working Days or such longer period as the parties may agree.

10.3 A dispute not resolved to the satisfaction of both parties in accordance with clauses 10.1 and 10.2 shall next be referred at the request of either party to a mediator appointed by agreement between the parties within ten (10) Working Days of one party requesting mediation, with allocation of the costs of the mediation to be determined by the mediator.

10.4 Nothing in this clause shall prevent either party from seeking from any Court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

10.5 The performance of this Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor shall comply fully with its obligations under this Agreement at all times.

**11. INTELLECTUAL PROPERTY**

11.1 All Intellectual Property Rights:

11.1.1 provided to the Contractor by the Council shall remain the property of the Council; and/or

11.1.2 prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of this Agreement shall belong to the Council subject to any exceptions set out in the Tender.

11.2 The Contractor shall obtain all necessary approvals and/or licences before using any material, in relation to the performance of this Agreement which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive, perpetual, royalty-free and irrevocable licence, or if the Contractor is a licensee of those rights, the Contractor shall grant to the Council an authorised perpetual, free, irrevocable and royalty-free sub-licence to use, reproduce and maintain the Intellectual Property Rights.

11.3 Any licence or sub-licence granted to the Council in accordance with clause 11.2 shall be non-exclusive, irrevocable, shall include the right to sub-licence, transfer, novate or assign to other councils, a replacement contractor or to any third party providing services to the Council, and shall be granted at no cost to the Council.

11.4 It is a condition of this Agreement that the Services will not infringe any Intellectual Property Rights of any third party and, without prejudice to the generality of the provisions of clause 8.5, the Contractor shall during and after the Contract Period indemnify and keep indemnified without limitation the Council against all liabilities which the Council may suffer or incur as a result or in connection with any breach of this clause 11, except where any such claim relates to the act or omission of the Council.

**12. CONFIDENTIALITY**

12.1 Except to the extent set out in this clause or where disclosure is expressly permitted, each party shall:

12.1.1 treat the other party’s Confidential Information as confidential; and

12.1.2 not disclose the other party’s Confidential Information to any other person without the owner’s prior written consent.

12.2 Clause 12.1 shall not apply where:

12.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure;

12.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

12.2.3 such information was obtained from a third party without obligations of confidentiality;

12.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

12.2.5 it is independently developed without access to the other party’s Confidential Information.

12.3 The Contractor shall not, and shall procure that the Contractor’s staff do not, use any of the Council’s Confidential Information received otherwise than for the purpose of providing the Services.

**13. DATA PROTECTION ACT**

13.1 With respect to the handling of any Personal Data in accordance with the Data Protection Act 1998 it is agreed by the parties that the Council is the Data Controller and that the Contractor is the Data Processor.

13.2 The Contractor shall:

13.2.1 process the Personal Data only in accordance with instructions from the Council;

13.2.2 process the Personal Data only to the extent, and in such a manner, as is necessary for the priorities of the Services or as is required by Law;

13.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, obstruction, damage, alteration or disclosure;

13.2.4 take reasonable steps to ensure the reliability of any Contractor’s staff who have access to the Personal Data;

13.2.5 obtain prior written consent from the Council in order to transfer the Personal Data to any sub-contractors for the provision of the Services;

13.2.6 ensure that all Contractor’s staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 13;

13.2.7 ensure that none of the Contractor’s staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;

13.2.8 notify the Council within 5 (five) Working Days if it receives:

13.2.8.1 a request from a Data Subject to have access to that person’s Personal Data; or

13.2.8.2 a complaint or request relating to the Council’s obligations under the Data Protection Act 1998.

13.2.9 provide the Council with full cooperation and assistance in relation to any complaint or request made, by:

13.2.9.1 providing the Council with full details of the complaint or request;

13.2.9.2 complying with data access request within the relevant timescales set out in the Data Protection Act 1998 and in accordance with the Council’s instructions;

13.2.9.3 providing the Council with any Personal Data it holds in relation to a Data Subject; and

13.2.9.4 providing the Council with any information requested by the Council.

13.2.10 permit the Council to inspect and audit the Contractor’s data processing activities and comply with all reasonable requests or directions by the Council to enable the Council to verify that the Contractor is in full compliance with its obligations under this Agreement;

13.2.11 if requested provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data;

13.2.12 not process Personal Data outside the European Economic Area without the prior written consent of the Council.

13.3 The Contractor shall comply at all times with the Data Protection Act 1998 and shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of its applicable obligations under the Data Protection Act 1998.

**14. FREEDOM OF INFORMATION**

14.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall assist and cooperate with the Council to enable the Council to comply with its information disclosure obligations.

14.2 The Contractor shall:

14.2.1 transfer to the Council all Requests for Information that it receives as soon as possible and in any event within two (2) Working Days of receiving a Request for Information;

14.2.2 provide the Council with a copy of all information in its possession within five (5) Working Days of the Council’s request; and

14.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information.

14.3 The Council shall be responsible for determining whether any Information is exempt from disclosure.

14.4 In no event shall the Contractor respond directly to a Request for Information.

**15. RECORD KEEPING**

15.1 The Contractor shall keep and maintain for a period of not less than twelve (12) years after the termination of this Agreement, or for as long a period as agreed between the parties in writing, full and accurate records of this Agreement, including all expenditure reimbursed by the Council and all payments made by the Council.

15.2 Upon request by the Council, the Contractor shall allow the Council and the Council’s representatives such access to those records kept in accordance with clause 15.1 as may be required by the Council in connection with this Agreement.

**16. BRIBERY AND CORRUPTION**

16.1 The Council shall be entitled to terminate this Agreement for material breach pursuant to clause 9.1 and, without prejudice to clause 8, to recover from the Contractor the amount of any loss resulting from such termination if the Contractor:

16.1.1 offers or gives or agrees to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation to the obtaining of execution of this Agreement or any other agreement with the Council; or

16.1.2 for showing, or forbearing to show, favour or disfavour to any person in relation to any person in relation to this Agreement or any other agreement with the Council or if any like acts shall have been done by any person employed by the Contractor, or acting on the Contractor’s behalf (whether with or without the knowledge of the Contractor); or

16.1.3 if in relation to any contract with the Council the Contractor, or any person employed by the Contractor or acting on the Contractor’s behalf, shall have committed any offence under the Bribery Act 2010 or any amendment to it; or

16.1.4 shall give any fee or reward the receipt of which is an offence under section 117 (2) of the Local Government Act 1972.

**17. FORCE MAJEURE**

17.1 Subject to the following provisions of this clause, neither party shall be considered to be in default of this Agreement or liable to the other party by reason of any delay or failure in the performance of that party’s obligations under this Agreement to the extent resulting directly from any force majeure event.

17.2 If either party is prevented from performing its obligations under this Agreement by a Force Majeure Event:

17.2.1 it shall immediately serve notice in writing on the other party, giving details of the nature, circumstance and commence of the Force Majeure Event; and

17.2.2 it shall use all reasonable endeavours to end or resolve the Force Majeure Event and to resume performance of its obligations as soon as it has ceased.

17.2.3 it shall use all reasonable endeavours to continue performance of this Agreement

17.3 Relief under clause 17.2 shall be subject to the ending party using all reasonable endeavours to continue performance of this agreement during the continuance of the Force Majeure Event.

17.4 If a Force Majeure Event continues for a period of more than twenty eight (28) days from the date of its commence either party shall be entitled to terminate this Agreement immediately upon written notice to the other party without liability except for any rights or liabilities which have accrued up to the date of termination.

**18. NOTICES**

18.1 Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be served personally, or by sending it by first class post or recorded delivery to the appropriate address, as set out in the Specification.

18.2 Any notice shall be deemed to be served:

18.2.1 on the day of delivery if served personally; or

18.2.2 48 hours after posting if by first class post; or

18.2.3 at the time of signature if by recorded delivery.

**19. VARIATION**

19.1 No variation to this Agreement shall be valid unless it is in writing and signed for and on behalf of the Council and the Contractor.

19.2 Where any variation is entered into pursuant to clause 19.1 each party shall bear their own costs.

**20. WAIVER**

20.1 The failure by either party to enforce at any time any area or more of the provisions of this Agreement shall not be a waiver of them, or of the right at any time subsequently to enforce all or any of the provisions of this Agreement.

20.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing.

**21. THIRD PARTY RIGHTS**

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

**22. ASSIGNMENT**

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

22.2 The Council shall be entitled to:

22.2.1 assign, novate or dispose of its rights and obligations under this Agreement either in whole or in part to any Contracting Authority (as defined in the Public Contracts Regulations 2006, as amended); or

22.2.2 transfer, assign or novate its rights and obligations where required by Law or as part of a reorganisation.

22.3 The Contractor shall remain fully responsible and liable for the acts and omissions of any sub-contractors, servant, agents or employees as though they were its own.

**23. SEVERANCE**

23.1 If any provision of this Agreement shall become or shall be declared by any Court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

**24. COSTS AND EXPENSES**

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

**25. NO AGENCY OR PARTNERSHIP**

25.1 Nothing in this Agreement will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee.

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

**26. OFFERS OF EMPLOYMENT**

26.1 For the duration of this Agreement and a period of 12 (twelve) months following expiry or termination of this Agreement the Contractor shall not employ or offer employment to any of the Council’s employees who have been associated with the procurement or contract management of the Services or operation of the Technology without the Council’s prior written approval.

**27. CO-OPERATION AND MONITORING**

27.1 In providing the Services, the Contractor shall co-operate with the Council and comply with the Council’s reasonable requests to enable it to monitor the performance of this Agreement or the provision of the Services or in carrying out any power or function or for such other purposes as the Council may reasonably determine from time to time.

27.2 The Contractor will at its own cost provide any information that may be required by the Council to comply with the Council’s procedures for monitoring of this Agreement.

27.3 The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor’s premises in relation to this Agreement.

**28. LAW AND JURISDICTION**

28.1 This Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

This Agreement executed as a **DEED** on the date at the start of it

Executed as a **DEED** by

**NORTH WEST LEICESTERSHIRE**

**DISTRICT COUNCIL** by affixing

the **COMMON SEAL** in the presence of

-----------------------------------------

Authorised Signatory

Executed as a **DEED** by

[**TBC**] by [**TBC**]

**SCHEDULE 1**

**Contract Period**

**SCHEDULE 2**

**The Specification**

**SCHEDULE 3**

**The Tender**