
Biffa Procurement

General Terms and Conditions of Purchase

Service Only

Owner: Brendan Hyden, Head of Procurement

Author: Dan Fryer, Senior Legal Counsel. Anya Calcott, Senior Legal Counsel

Document Date: 22 December 2021

Version: 3-20211222

Classification: COMMERCIAL IN-CONFIDENCE

1 BASIS OF CONTRACT

- 1.1 These terms and conditions (“**Conditions**”) apply to the agreement (“**Contract**”) between:-
- 1.2 Biffa Waste Services Limited (a private limited company registered in England and Wales under number 00946107) (“**BWSL**”) or such other member of the group companies of which BWSL is a part of as is set out in the Order (“**Biffa**”); and
- 1.3 The Supplier for the supply of services (or any part of them) (“**Services**”) set out in Biffa’s written purchase order document issued by Biffa (“**Order**”).
- 1.4 These Conditions shall apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate within its quotation, acceptance of the Order or any other communication, or which are implied by trade, custom, practice or course of dealing unless such terms are expressly agreed to by Biffa and set out in the Order.
- 1.5 “**Affiliates**” means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity, where Control has the meaning given to it in section 1124 of the Corporation Tax Act 2010.
- 1.6 Any reference to legislation in these Conditions includes that legislation as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time, any laws that replace, extend, re-enact, consolidate or amend such legislation, and all subordinate legislation made from time to time under that legislation.

2 WARRANTIES

- 2.1 The Supplier warrants, represents and undertakes to Biffa that:-
 - 2.1.1 it will maintain all regulatory approvals, licences and consents required to be able to lawfully supply the Services;
 - 2.1.2 it will comply with all Applicable Laws (being applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction;
 - 2.1.3 the supply of the Services and their use for their intended purpose shall not infringe the intellectual property rights of any third party;
 - 2.1.4 the Services shall:
 - 2.1.4.1 comply with all laws regulations, standards and best industry practice;
 - 2.1.4.2 conform to any sample, and with the quantity, description, specification and standards (if any) clearly stated or referred to in the Order;
 - 2.1.4.3 be free from defects in designed, material and workmanship;
 - 2.1.4.4 be of satisfactory quality within the meaning of the Supply of Goods and Services Act 1982 (as amended);
 - 2.1.4.5 if the purpose for which they are required is indicated in the Order or has otherwise been made known to the Supplier by Biffa, either expressly or by implication, be fit for that purpose conform and comply with European and UK Health and Safety legislation including but not limited to, the Health and Safety at Work Act 1974 and regulations made under this Act, and shall be performed with all due skill, care and diligence and so as to meet any requirements of Biffa.
- 2.2 The Supplier shall pass to Biffa for its own benefit and the benefit of its Biffas, the benefit of all manufacturer and other third party warranties and/or guarantees relating to the Services.

3 BREACH OF WARRANTY

- 3.1 If there is a breach of any of the warranties in Condition 2, then without limiting any of its other rights or remedies, and whether or not it has accepted the Services, Biffa may exercise any one or more of the following remedies at the Supplier’s cost and expense (such to include any transportation costs and any other costs that Biffa incurs that it would not have incurred but for the breach):
 - 3.1.1 have the Supplier promptly replace the Services with Services that comply with the Contract; or
 - 3.1.2 Biffa may reject the non-compliant Services and the Supplier shall refund any amounts paid; and
 - 3.1.3 Biffa shall procure the Services from alternate sources and any additional cost to Biffa shall be borne by the Supplier invoiced by Biffa to the Supplier on the date Biffa places its order with the alternate source and shall be due and payable within 60 days of the date of Biffa’s invoice.

4 PERFORMANCE OF THE CONTRACT

- 4.1 Except where the parties agree in writing that any activity or the grant of any right of access or use is to be provided by Biffa or its end customer, the Supplier shall be wholly responsible for providing

- personnel assets, facilities, software and other materials and resources that are required to enable it to provide the Services and comply with its other obligations under the Contract.
- 4.2 The Supplier shall ensure that access to any assets owned by, or in the possession or control of Biffa or its Affiliates ("**Biffa Assets**") is only sought by, granted to and, used by members of the Suppliers personnel who require access and use for the proper performance of their duties under the Contract and that such Supplier personnel (and the Supplier) only use Biffa Assets to the extent strictly necessary for such performance;
- 4.3 In respect of any premises owned or occupied by Biffa or a Biffa end customer (collectively, "Biffa Premises"):
- 4.3.1 Biffa and/or its end user shall be entitled to refuse to admit, and to require the Supplier to remove, any person employed or engaged by the Supplier whose presence would, in the reasonable opinion of Biffa or its end customer, be prejudicial to the performance of the Contract; and
- 4.3.2 Biffa and/or its end user shall inform the Supplier, or member(s) of the Supplier personnel accessing the Biffa Premises of any relevant health and safety matters and/or policies with which the Supplier, Supplier personnel must comply while on the Biffa Premises.
- 4.4 The Supplier shall, and shall ensure that the Supplier personnel shall, not remove any Biffa Assets which constitute personal (as opposed to real) property from Biffa Premises without Biffa's prior written consent or permit or assert any lien over, sell, offer for sale, assign, mortgage, encumbrance, pledge, sub-let or lend out any of Biffa Assets.
- 4.5 The Supplier shall take reasonable and proper care of Biffa Assets in its possession or control, be responsible for any loss of, or damage to, such Biffa Assets caused by the Supplier or Supplier personnel, provided that the Supplier shall not be liable for fair wear and tear of any Biffa Asset resulting from its normal and proper use in connection with the provision of the Services, and deliver them back to the relevant Affiliate end customer on demand.
- 4.6 All property of the Supplier located on Biffa's Premises shall remain at the sole risk and responsibility of the Supplier.
- 4.7 Biffa shall not be obliged to purchase any minimum quantity or volume of Services and may purchase services, or services similar to the Services, from any other supplier at its discretion.
- 4.8 Each Order by Biffa to the Supplier shall be an offer to purchase Services subject to the Contract.
- 4.9 An Order may with withdrawn or amended by Biffa at any time before acceptance by the Supplier.
- 4.10 Acceptance of an Order by the Supplier shall occur when it is expressly accepted by the Supplier orally or in writing or by any conduct of the Supplier which Biffa reasonably considers is consistent with acceptance of the Order.
- 4.11 The Supplier shall deliver the Services at the delivery location on the delivery date (during Biffa's normal business hours) set out in the Order or as amended by agreement in writing between the parties from time to time.
- 4.12 If the Services are not delivered on the delivery date, then, without limiting any other right or remedy Biffa may have, Biffa may:-
- 4.12.1 refuse to take any subsequent attempted delivery of the Services; or
- 4.12.2 terminate the Contract with immediate effect without any liability to the Supplier.
- 4.13 The Supplier shall ensure that:-
- 4.13.1 the Services are marked in accordance with Biffa's instructions as set out in the Order and any applicable laws and any deliverables included are properly packaged and stored so as to reach their destination in an undamaged condition; and
- 4.13.2 each delivery is accompanied by a prominently displayed delivery note and all handling, storage, operating and safety instructions. If the Supplier requires packaging material to be returned to it, it must clearly state this on the delivery note. Any such packaging will be returned at the Supplier's cost unless otherwise stated in the Order.
- 4.14 The Supplier agrees on request to provide Biffa with any necessary:-
- 4.14.1 warranties, manuals and instruction for use of the Services;
- 4.14.2 any other documents and information relating to the Services or their delivery reasonably requested by Biffa.
- 4.15 Biffa shall not have accepted, or be deemed to have accepted, the Services until the Acceptance Conditions are fulfilled and Biffa has notified confirmation of such to the Supplier in writing.
- 4.15.1 The '**Acceptance Conditions**' are that:
- 4.15.1.1 the Services and delivery note have been delivered to or at the delivery location; and

- 4.15.1.2 all pre-delivery and post-delivery acceptance tests and inspections have been completed to the satisfaction of Biffa at its sole discretion;
- 4.15.1.3 Biffa has notified the Supplier in writing that the Services have been delivered in full compliance with the Order and the Contract including this Condition 4.15.
- 4.15.2 Biffa shall be entitled to reject any Services which are not in full compliance with the Contract. Any acceptance of defective, late or incomplete Services or any payment made in respect thereof, shall not constitute a waiver of any of Biffa's rights and remedies, including its right to reject.
- 4.15.3 Biffa may require pre-delivery and/or post-delivery acceptance tests to be performed or to be carried out, at Biffa's option, either by Biffa or the Supplier, and the results of the tests shall be made available to Biffa.
- 4.15.4 Biffa may inspect and test the Services during creation or delivery and the Supplier shall provide Biffa with access to and use of all facilities reasonably required.
- 4.15.5 Any inspection or testing of the Services shall not be deemed to be acceptance of the Services or a waiver of any of Biffa's other rights and remedies, including its right to reject.
- 4.15.6 The rights of Biffa in this Condition 4.15 are without prejudice to Biffa's other rights and remedies under the Contract.
- 4.16 The following Biffa policies from time to time, which can be found at www.biffa.co.uk, and in any Biffa Supplier platform, shall apply to and shall be complied with by the Supplier at all times, including any changes thereto, and any changes to them shall take effect on the earliest publication on either of www.biffa.co.uk or any Biffa Supplier platform:-
- 4.16.1 Terms and Conditions for use of Biffa.co.uk website;
- 4.16.2 Modern Slavery Statement;
- 4.16.3 Cookie Policy; Supplier Code of Conduct;
- 4.16.4 Supplier Billing and Payment Policy;
- 4.16.5 Any other policies introduced by Biffa or by the Indemnified Parties intended to apply to the Supplier;
- together known as "**Biffa Policies**".
- 4.17 The Supplier shall promptly notify Biffa and in any event within five days of becoming aware of a breach of Biffa Policies. Such breach constitutes a material breach of the Contract.
- 4.18 The Supplier shall at its own cost co-operate with any regulatory authority as required from time to time.
- 5 PRICE AND PAYMENT**
- 5.1 The price of the Services and the currency for payment shall be set out in the Order. Prices are exclusive of value added tax or any other similar tax ("VAT") payable in Biffa's jurisdiction of incorporation but includes all other taxes, duties and levies. If VAT is chargeable in Biffa's jurisdiction of incorporation, it will be separately identified on the invoice and will be payable by Biffa subject to the Supplier's compliance with its obligations in Condition 5.3 and without prejudice to Condition 5.4 below, as applicable.
- 5.2 Subject to Condition 5.4 the Supplier may invoice Biffa for the Services on or following the later of:-
- 5.2.1 any payment dates referred to in the Order;
- 5.2.2 the scheduled delivery date; or
- 5.2.3 the actual delivery date if the Services have been delivered in accordance with the Contract.
- 5.3 The Supplier will follow Biffa's Supplier Billing and Payment Policy with respect to the mechanics of issuing and the format of the invoice and will include on the invoice Biffa's Order number and a full breakdown of the price (with sufficient information to enable Biffa to verify the price).
- 5.4 The Supplier shall not be entitled to invoice Biffa later than six months following delivery of the Services to Biffa and Biffa shall not be obliged to pay the Supplier for such Services if an invoice is received after such six months has elapsed.
- 5.5 Provided the Services are free from defects and provided the invoice is submitted in accordance with the Contract, then Biffa will pay the Supplier no later than 60 days after the date on which Biffa received the Supplier's invoice. If such a day is not a normal banking day in Biffa's place of business, then payment will be made by the following normal banking day in Biffa's place of business. If Services are found to be defective before payment is made, Biffa shall only pay for the non-defective Services and Condition 3 shall apply to the defective Services.
- 5.6 **Permitted Expenses.** Where the Contract allows for travel and subsistence costs to be recovered in addition to the price, such costs shall only be recoverable to the extent that they have been reasonably incurred exclusively in connection with the Services, with the prior consent of Biffa, and in compliance with the permitted expenses policy as made available to the Supplier and updated

from time to time. The payment by Biffa for costs and expenses referred to in this Condition are subject to the following conditions:

5.6.1 the Supplier shall provide a detailed breakdown of the expenses incurred with respect to any expense item with a value in excess of one thousand pounds sterling (£1000); and

5.6.2 the Supplier shall provide any additional information regarding such expenses as Biffa may request from time to time.

5.7 Biffa will be entitled to set-off any liability (including amounts invoiced but not yet due) owed by it to the Supplier against any liability of the Supplier or any of its Affiliates to Biffa or any of its Affiliates under the Contract or any other agreement.

5.8 If the Supplier does not receive any undisputed invoice amount due from Biffa under the Contract on its due date, the Supplier will be entitled to charge interest on all undisputed overdue amounts at a rate of 2% per annum above the base lending rate for Barclays bank, accruing on a simple basis from the day the amount became overdue and ending on the day payment is received in full by the Supplier. For the avoidance of doubt, but subject always and without prejudice to the Supplier's remedies set out in Condition 14, the Supplier shall not be entitled to withhold or suspend the supply of Services as consequence of any failure by Biffa to pay any amount by its due date.

6 **TITLE AND RISK**

6.1 Risk and title in the Services shall pass to Biffa on delivery to the delivery location specified in the Order. The Supplier will ensure that title to the Services or any part of them transfer to Biffa with full title guarantee and free from any encumbrances.

6.2 The passing of title shall not prejudice any other of Biffa's rights and remedies and Biffa may use or resell the Services in the ordinary course of its business.

7 **CONFIDENTIALITY AND ANNOUNCEMENTS**

7.1 **Confidential Information** means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract.

7.2 Each party shall keep confidential all Confidential Information of the other party and the other party's Affiliates and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

7.2.1 any information which was in the public domain at the date of the Contract;

7.2.1.1 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

7.2.1.2 any information which is independently developed by one party without using information supplied by the other or by the other's Affiliates; or

7.2.1.3 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

7.3 This clause shall remain in force during and for a period of five years from the date of termination of the Contract.

7.4 The Supplier shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

8 **DATA PROTECTION AND BIFFA MATERIALS**

8.1 **Data Protection Laws** means any Applicable Law relating to the processing, privacy and/or use of Personal Data, as applicable to either party or the Contract, including:

8.1.1 the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018;

8.1.2 the Data Protection Act 2018 ("DPA");

8.1.3 any laws which implement any such laws;

8.1.4 all guidance, guidelines, codes of practice and codes of conduct issued by any relevant supervisory authority relating to such Data Protection Laws (in each case whether or not legally binding);

8.1.5 For the purpose of this Condition 8, "Controller", "Personal Data" and "Process" shall have the meanings given to them in the **DPA**.

8.2 The Parties each acknowledge and agree that they may need to Process Personal Data, which they will do so in their respective capacities as Controllers, in order to (as appropriate)-

8.2.1 administer and supply the Services;

8.2.2 request and receive the Services;

8.2.3 compile, dispatch and manage the payment of invoices relating to the Services;

- 8.2.4 manage the Contract and resolve any disputes relating to it;
 - 8.2.5 respond and/or raise general queries relating to the Services; and
 - 8.2.6 comply with their respective regulatory obligations.
- 8.3 Each Party shall Process Personal Data for the purposes set out in Condition 8.2 in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Personal Data with their Affiliates, and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Condition 8.3, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with Data Protection Laws.
- 8.4 Where the Services require the Supplier to Process Personal Data as a Processor for Biffa, the parties will enter into Biffa's Data Processing Agreement.
- 9 INSURANCE**
- 9.1 The Supplier agrees to take out and maintain with a reputable insurance company:-
- 9.1.1 public and products liability insurance with a minimum level of indemnity of not less than £2,000,000 (two million pounds); and
 - 9.1.2 such other insurances of a sufficient value, and in respect of the types of insurance, that it is reasonable for Biffa to require of a supplier supplying services similar to those of the Supplier under this Contract to maintain; and
 - 9.1.3 any other insurance required by applicable law from time to time.
- 9.2 The Supplier shall provide Biffa with a copy of such insurance certificates and policies upon reasonable request.
- 10 INDEMNITIES**
- 10.1 The Supplier shall at all times indemnify Biffa, its Affiliates, their officers, employees, consultants, and agents ("**Indemnified Parties**"), and keep the Indemnified Parties indemnified, from and against any and all damages, losses, costs or expenses incurred by the indemnified Parties, which indemnity shall not be limited by clause 11, in connection with:-
- 10.1.1 any breach of Applicable Laws, actions or remedies required, proceedings commenced or threatened by a regulatory authority (including any fines imposed by such regulatory authority) as a result of a default by the Supplier;
 - 10.1.2 a breach of Condition 2 (Warranties), Condition 7 (Confidentiality), Condition 8 (Data Protection), Condition 12.2 (Anti-Bribery and Corruption), Condition 13 (Anti-Slavery), and any other liability which cannot be limited or excluded by law which occurs in the performance of the Supplier's obligations under the Contract.
- 11 LIMITATION OF LIABILITY**
- 11.1 Neither Party excludes or limits its liability to the other:
- 11.1.1 for personal injury or death caused by its negligence;
 - 11.1.2 for any matter for which, at law, a Party cannot exclude or limit or attempt to exclude or limit its liability;
 - 11.1.3 for fraud or fraudulent misrepresentation.
- 11.2 Subject to Condition 11.1, neither Party shall have any liability to the other Party for any indirect, special or consequential loss, loss of profits or expected turnover.
- 11.3 Subject to Condition 11.1 and 11.2 Biffa's liability to the Supplier shall be limited to the price of the Services which are the subject of the Contract delivered to Biffa in the 12 months prior to the event giving rise to the liability .
- 12 ANTI-BRIBERY AND CORRUPTION**
- 12.1 The Supplier shall:-
- 12.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
 - 12.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK
 - 12.1.3 maintain an effective anti-bribery (including gift and hospitality) compliance programme, designed to ensure compliance including the monitoring of compliance and detection of violations;
 - 12.1.4 promptly report to Biffa any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract; and
 - 12.1.5 reasonably assist Biffa, to comply with anti-bribery and corruption legislation.
- 12.2 The Supplier warrants to Biffa on an ongoing basis that neither it nor any person acting on its behalf has given, or agreed or promised to give, or will give, agree or promise to give, any financial or other

advantage, to or for the benefit of any other person in order to obtain or influence the award of the Contract or to reward any act or decision of any representatives of Biffa in relation to the award or negotiation of the Contract.

12.3 Breach of this Condition 12 shall constitute a material breach of the Contract.

13 ANTI-SLAVERY

13.1 The Supplier undertakes, warrants and represents that:-

13.1.1 neither the Supplier nor any of its officers, employees, agents, sub-contractors have:-

13.1.2 committed an offence under the Modern Slavery Act 2015 ("**MSA Offence**"); or

13.1.3 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

13.1.4 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

13.1.5 it shall notify Biffa immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or sub-contractors, Affiliates, have breached or potentially breached any of the Supplier's obligations under this Condition 13.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

13.2 Any breach of Condition 13.1 by the Supplier shall be deemed a material breach of the Contract and shall entitle Biffa to terminate or suspend the Contract with immediate effect.

14 TERMINATION

14.1 Biffa may terminate all or part of the Contract:-

14.1.1 for convenience at any time by giving written notice to the Supplier without liability to the Supplier; and

14.1.2 if the Supplier has in the reasonable opinion of Biffa been involved in or acted in such a way that may have a negative effect on Biffa's reputation or any part of its business

14.2 Either party may by written notice terminate the Contract if the other party is in material breach of any Condition(s) of the Contract, which is either:-

14.2.1 not capable of remedy; or

14.2.2 being capable of remedy, has not been remedied within thirty (30) days after written notice from the other party requiring it to do so.

14.2.3 For the purposes of this Condition 14.2:-

14.2.3.1 a number of breaches (whether of the same or different obligations and regardless of whether those breaches are remedied, whether concurrent or occurring over a period of time) may collectively constitute a material breach to which Condition 14.2.1 or 14.2.2 applies whether or not each breach on its own would be considered a material breach;

14.2.3.2 late payment of invoices shall not constitute a material breach nor fall within the provisions of Condition 14.2.3.1;

14.2.3.3 the Supplier being involved in any activity or situation which, in the reasonable opinion of Biffa, does or may have a negative or unfavourable effect on Biffa's reputation or on any part of its business, shall constitute a material breach not capable of remedy.

14.3 Either party may terminate the Contract at any time with immediate effect if:-

14.3.1 a resolution is passed, or an order is made for the winding up (or equivalent order in the relevant jurisdiction) of the other Party, otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction;

14.3.2 the other party becomes subject to an administration order; a liquidator, receiver or administrative receiver or similar is appointed over any of its property or assets;

14.3.3 the other party enters into an arrangement or composition with its creditors, ceases or threatens to cease to carry on business, becomes insolvent or ceases to be able to pay its debts as they fall due;

14.3.4 the other party is subject to any events or circumstances analogous to those in Conditions 14.3.1 to 14.3.3 whether as a corporate entity, a partnership, an individual sole trader or otherwise;

14.3.5 the other Party is affected by a Force Majeure Event (defined in Condition 21.4) continues for a period of forty five (45) days.

14.4 If the Contract is terminated:

14.4.1 the Contract shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after termination; and

- 14.4.2 the rights of either party accrued on or prior to termination shall remain unaffected.
- 14.5 Upon termination of the Contract in accordance with its terms by either party, and provided that of the Services delivered to Biffa in the 12 months prior to the date of termination, no more than 10% of the Services breached the warranties in Condition 2, the Supplier shall complete the supply of and Biffa shall complete the purchase of Services for up to 3 months following the date of termination.
- 15 **AUDIT AND INSPECTION**
- 15.1 The Supplier shall permit the auditors to conduct audits of the Supplier during the term of the Contract (and for six years after the expiry or termination of the Contract). The right of audit includes a right for the auditor to enter any of the Supplier premises to inspect and take copies of such books and records and to interview members of the Supplier personnel once per annum.
- 15.2 The purpose of any audit carried out under this Condition 15 shall be to provide the auditor with assurance as to the Supplier's compliance with the Contract, to enable Biffa to investigate any complaints or queries of or provide information required by a regulatory authority or any Affiliates of Biffa relating to the Services or the conduct of the Supplier, the Supplier personnel, and to investigate any suspicion of fraud or wrongful practice on the part of the Supplier, the Supplier personnel.
- 15.3 The Supplier shall cooperate with the auditor and will provide or procure such access and assistance as the auditor requires in order to enable the auditor to fully exercise the rights set out in Condition 15.1. Except where the audit is undertaken in respect of suspected fraud or breach or by a regulatory authority which stipulates that no notice should be given, Biffa shall provide at least three (3) Working Days (as defined below) written notice of the audit, shall conduct the audit (or procure it is conducted) within the hours of 9.00 am to 5.30 pm GMT ("**Normal Business Hours**") on a day other than a Saturday, Sunday or a bank holiday in the jurisdiction of Biffa ("**Working Day**").
- 16 **INTELLECTUAL PROPERTY RIGHTS (IPR)**
- 16.1 Any intellectual property rights includes but is not limited to; patents, designs and trade marks (whether registered or unregistered), copyright, database rights and know how (collectively, "IPR")
- 16.2 Title, right and interest in the product and/or Services which are procured, prepared, developed and/or delivered by the Supplier for Biffa (hereinafter known as "Deliverables") together with the IPR therein shall, upon payment by Biffa for the Services in respect of which the Deliverables were created, vest in Biffa and/or its end customer as stated on the Order.
- 16.3 The Supplier undertakes to sign such documentation and take such action (if any) as may be reasonably requested by Biffa to vest any IPR in the Deliverables in Biffa and/or its end customer.
- 16.4 The Supplier shall, at its cost, reasonably procure that the Supplier personnel, providing Deliverables, contract with it on terms which ensure that any IPR arising out of or relating to the Deliverables and work done by that person shall vest in, or otherwise be assigned absolutely and with full title guarantee to Biffa in support of the Supplier's obligations of this Condition 16. For the avoidance of doubt, Biffa shall be responsible for the costs involved in registering any IPR or any on-going costs associated with such IPR.
- 16.5 For any Deliverables which include any third party IPR which are embedded in or which are an integral part of the Deliverables, the Supplier hereby grants (or shall procure the grant of) a perpetual, non-terminable, sub-licensable, fully assignable, royalty-free licence to Biffa or its end customer to use, copy or amend the to the extent necessary to enjoy the benefits of the Deliverables.
- 17 **ASSIGNMENT AND SUB-CONTRACTING**
- 17.1 The Supplier shall not assign, transfer or sub-contract any or all of its rights or obligations under the Contract without Biffa's prior written consent. Any such consent shall not relieve the Supplier of its obligations under the Contract.
- 18 **NOTICES**
- 18.1 Where the Contract requires notice to be given by one party to the other such notice shall be in writing and shall be delivered as follows:
- 18.1.1 in the case of delivery to Biffa, by email to supplier.notices@biffa.co.uk and by first class post or special delivery post addressed to the Head of Procurement to the registered office of Biffa;
- 18.1.2 in the case of delivery to the Supplier addressed to a Director at the Supplier's registered office address.
- 18.2 Posted notices will be deemed to have been duly served at 11am on the first Working Day 48 hours after being posted.
- 18.3 Notices by email will be deemed to have been duly served at 11am the next Working Day after sending unless the email is returned to the sender as undeliverable

- 18.4 In the case of communications relating to the Contract which do not relate to matters where the Contract requires notice to be given, communications may take place by email between the parties using then current email addresses usually used between the parties.
- 19 **SEVERABILITY**
- 19.1 If any Condition(s) under the Contract are deemed or found to be invalid or unenforceable by a court of competent jurisdiction, such provisions shall be deemed omitted, all other provisions shall remain in full force and effect.
- 20 **THIRD PARTY RIGHTS**
- 20.1 Save for the Indemnified Parties, a person who is not a party to the Contract may not enforce the Contract under the Contracts (Rights of Third Parties) Act 1999.
- 21 **FORCE MAJEURE**
- 21.1 Neither party shall be liable for the failure to perform its obligations under the Contract, if such failure results from a Force Majeure Event which prevents or delays the performance of its obligations under this Contract.
- 21.2 Each party shall use all reasonable endeavours to limit the effects of any Force Majeure Event.
- 21.3 Each party agrees to give notice forthwith to the other upon becoming aware of a Force Majeure Event, such notice to contain details of the circumstances giving rise to the Force Majeure Event.
- 21.4 A "Force Majeure Event" means an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, failure of supplies of power, fuel or water at utilities infrastructure level, strike, lockout or boycott or other industrial action (except strikes or other industrial disputes involving the Supplier's or its supplier's workforce).
- 22 **VARIATION AND WAIVER**
- 22.1 No variation of this Contract shall be effective unless it is in writing and signed by the parties.
- 22.2 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 22.3 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 23 **ENTIRE AGREEMENT**
- 23.1 The Contract contains or refers to all the terms which Biffa and the Supplier have agreed in relation to the supply of the Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Services. The Supplier's standard terms and conditions referred to in any correspondence or quotation form shall not to apply to the Contract. The Supplier acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of Biffa or its Affiliates which is not set out in the Contract and agrees that it shall have no claim in respect of the same. Nothing in the Contract will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 24 **NO PARTNERSHIP, JOINT VENTURE, AGENCY OR EMPLOYMENT**
- 24.1 Nothing contained in the Contract, and no action taken by the parties pursuant to the Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.
- 25 **NON-SOLICITATION**
- 25.1 In relation to each Contract, neither party shall, without the prior written consent of the other party, for the duration of any Order and for a period of twelve (12) months after the performance of the Order, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee of the other party.
- 25.2 Nothing in the Contract shall limit the right of either party to employ any person who has approached it in response to any public advertisement.
- 26 **PUBLICITY**
- 26.1 The Supplier shall not:
- 26.1.1 make any public announcement or issue any public circular (including a media or press release) relating to the Contract or its subject matter without the prior written approval of Biffa; or

26.1.2 use the name or logos of Biffa or its Affiliates, as a reference or in any advertising or promotional materials without Biffa's prior written consent (on every occasion), which may be withdrawn at any time if it is given.

27 **JURISDICTION AND GOVERNING LAW**

27.1 The Contract and any non-contractual obligations arising out of or in relation to the Contract, will be governed by and construed in accordance with English law.

27.2 If the Supplier is incorporated in the United Kingdom, the English courts have jurisdiction to settle any dispute arising out of or in connection with the Contract, the legal relationships created by it, and any non-contractual obligations arising out of or in relation to it, and the Supplier submits to the exclusive jurisdiction of the English courts with respect to such disputes.

27.3 If the Supplier is not incorporated in the United Kingdom, any dispute arising out of or in connection with the Contract, whether arising in contract, tort, equity, for breach of statutory duty or otherwise, will be finally resolved in accordance with the Rules of the International Court of Arbitration of the International Chamber of Commerce ("ICC"). The seat and place of any such arbitration will be London, UK and the language of the arbitration will be English. There will be one arbitrator, selected and appointed by the Parties, except where:

27.3.1 the dispute involves an amount in excess of 2,000,000 GBP or equivalent (exclusive of costs and fees); or

27.3.2 the Parties are unable within 30 days to agree the identity of an arbitrator, in which cases three arbitrators will be appointed. In such instance, each Party will select one arbitrator within 30 days after giving or receiving the demand for arbitration (or failing to agree the identity of an arbitrator under Condition 27.3.2, and the two arbitrators so selected will jointly select the third arbitrator. If the two arbitrators fail to select the third arbitrator within 30 days, then the ICC will make the relevant appointment. This Condition does not limit the right of any Party at any time to seek interim measures of protection in any appropriate courts. Such preservation of rights will not be construed as a waiver or limitation of either Party's consent to arbitration.

END
