Dated 2017

 **WHITBY TOWN COUNCIL (1)**

**and**

 **DANFO (UK) LIMITED (2)**

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**Agreement for the upgrading**

**and operation of Six**

**public conveniences**

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Vincent, French and Browne

Rugby Chambers

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**THIS AGREEMENT** is made on 2017

# BETWEEN

(1) **WHITBY TOWN COUNCIL** of Pannett Park, Whitby, Yorkshire YO21 1RE (the “Council”) and

(2) **DANFO (UK) LIMITED** a company incorporated with limited liability in England and Wales (Reg. No. 2682551) of Danfo House, No 2 Victory Business Centre, Fleming Way, Isleworth TW7 6DB (“Danfo”).

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## WHEREAS

(A) Pursuant to an Invitation to Tender from the Council, Danfo has been awarded a contract for the upgrading and operation of six public conveniences in the Council district in Whitby commencing on the Commencement Date

(B) This Agreement shall replace all prior contractual correspondence between the parties.

(C) Danfo shall undertake such Works and supply such Equipment and Services to the Council as are more particularly set out in Schedules I and 2 hereof in order to upgrade and operate those six public conveniences more particularly referred to in the definition “Conveniences “ and in Schedule 1 hereof.

**IT IS AGREED** as follows:

**1. DEFINITIONS**

 **“Agreement”**

means this agreement.

**“Business Day”**

means a day (other than a Saturday or Sunday) on which banks are open for business in London;

**“Change”**

means a change, amendment, alteration, or modification to the Works, the Equipment or to the provision or administration of the Services in each case as required pursuant to this Agreement;

### “Contract Manager” and “Deputy Contract Manager”

means the representatives of Danfo appointed pursuant to the provisions of Clause 18

### “Commencement Date”

means the 1st July, 2017

**“Conveniences”**

means the six public conveniences in Whitby, North Yorkshire being: Abbey Car Park; Khyber Pass new facility; Market Place; New Quay Road; Ruswarp and West Cliff.

### “Conveniences Income”

means all monies whether in coin, note of the realm, credit or debit card, or otherwise paid by members of the public for use of the conveniences to be collected by Danfo;

**“Danfo Account”**

means such bank account as Danfo may notify to the Council from time to time;

##### “Environmental Claim”

any claim or notice of violation, prosecution, demand, action, official warning, abatement or other order (conditional or otherwise) relating to any substance whatsoever (whether in solid or in liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) or waste (as defined in the Environmental Protection Act 1990) which is capable of causing harm to man or any other living organism supported by the environment or damaging the environment or public health or welfare.

**“Equipment”**

means the materials and equipment to be supplied by Danfo pursuant to the terms hereof so as to maintain the operation of the Conveniences more particularly set out in Schedule 2 hereof

**“Expiry Date”**

means the tenth anniversary of the Commencement Date which may be extended to the fifteenth anniversary of the Commencement Date pursuant to the provisions of Clause 2 hereof;

**“Fee Commencement Date”**

means the Commencement Date;

**“Fee”**

means the aggregate annual amount to be applied by Danfo from time to time from the Conveniences Income or in the event of any shortfall to be paid by the Council to Danfo in payment for the Programme which amount is set out in Schedule 3 hereof;

**“Full Reinstatement”**

means the cost of complete reinstatement of the Conveniences allowing for inflation during the period of reinstatement including VAT on all such costs;

**“Invoice”**

means an invoice sent to the Council, valid for Value Added Tax purposes;

**“NNDR”**

means national non domestic rates initially payable by Danfo and re-imbursed by the Council in respect of the Conveniences;

**“Opening Times”**

means the time in which the Conveniences shall be unlocked and open for public use;

**“Party”**

means a party hereto and **“Parties”** shall be interpreted accordingly;

**“Permissions”**

means all planning buildings and highways permissions required to be obtained in connection with the Conveniences or the Programme;

**“Programme”**

means the performance of the Works the supply of the Equipment and the provision of the Services as set out in this Agreement in Schedule 1 hereof;

 **“Regulation”**

means any regulation, rule, official directive, request or guideline (having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

**“RPI”**

means the Retail Price Index (All Items) which is published by the Office for National Statistics of the United Kingdom in the Monthly Digest of Statistics or, if this ceases to be published, such other index as most closely resembles that index;

### “Services”

means all services to be performed by Danfo and provided at the Conveniences more particularly set out in Schedule 1 and Schedule 2 hereof

**“Supervising Officer”**

means the person appointed, from time to time, by the Council;

### “Termination Fee”

means the sum to be paid by the Council to Danfo in respect of the termination of this Agreement pursuant to the provisions of Clauses 25 and 26 and more particularly set out in Schedule 4 hereto in respect of the acquisition of the Equipment by the Council and the termination of the Works and/or the Services hereunder

**“Utility Providers”**

means the providers, from time to time, of the Utility Services;

**“Utility Services”**

means the supply of gas, electricity, water, sewerage and any other utilities required by the Conveniences to be initially paid by Danfo and re-imbursed by the Council.;

### “Works”

means those works to be undertaken by Danfo at the Conveniences more particularly set out in Schedule 1 and Schedule 2 hereof which may be subject to change pursuant to such further approvals or agreement necessary to satisfy all relevant statutory and regulatory permissions including planning consents building regulations and highway requirements;

 In this Agreement, unless otherwise specified:

(a) references to Clauses, Sub-clauses, paragraphs, sub-paragraphs and Schedules are to clauses, sub-clauses, paragraphs and sub-paragraphs of, and Schedules to, this Agreement;

(b) use of any gender includes the other genders;

(c) references to a **“person”** shall be construed so as to include any individual, firm, company, body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);

(d) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be re-enacted;

(e) the Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules; and

(f) headings and titles to clauses are inserted for convenience only and do not affect the interpretation of this Agreement.

**2. Commencement and Term of Agreement**

**2.1** This agreement shall have effect from the Commencement Date notwithstanding the date of execution hereof and shall remain in force until the Expiry Date unless earlier terminated pursuant to the terms hereof.

**2.2** In the event that the Council wishes to extend the term of the contract the Council may give notice in writing to Danfo not less than six months before the Expiry Date to extend the contract for a further period of five years.

**3. Performance of the Works and Services and Supply of Equipment**

**3.1.** Danfo shall complete the Works and supply the Equipment to the Conveniences at the times and in accordance with the specifications more particularly set out in Schedule 1 and 2 provided however that such works may be subject to change pursuant to such further approvals or agreement necessary to satisfy all relevant statutory and regulatory permissions including consents building regulations and highway requirements.

**3.2.** Danfo shall perform the Services to the reasonable satisfaction of the Supervising Officer for and on behalf of the Council.

**4. Supervising Officer**

**4.1.** The functions rights and powers conferred by this Agreement upon the Council shall be exercised by the Supervising Officer. The Supervising Officer may nominate an officer or officers with whom Danfo is to conduct all discussions and meetings.

**4.2**. Throughout the term of this Agreement, the Supervising Officer and his staff will conduct regular and thorough inspections of Danfo’s work and quality assurance procedures, in order to ascertain whether it is complying with its obligations under this Agreement.

**4.3.** In the event that the Supervising Officer shall determine that Danfo is not complying with its obligations hereunder written notice shall be delivered to Danfo setting-out in sufficient detail the breaches by Danfo of its obligations hereunder. Thereafter the representatives of Danfo and the Council shall meet to resolve such complaints as the Supervising Officer may have as to the performance by Danfo of its obligations hereunder and to resolve any grievances which may have arisen.

**5. Change to the Work and Equipment**

**5.1.** From time to time hereunder either Danfo or the Council may determine that there should be a Change to the Work or the Equipment whether pursuant to clause 3.1 or otherwise.

**5.2.** In that event the Parties shall negotiate in good faith in order to agree the sum to be paid to Danfo pursuant to any variation of the Fee

**5.3.** Without prejudice to any other provision hereof, no omission from, addition to, or variation of the Agreement shall be valid, or of any effect, unless it is in writing and signed by the Supervising Officer and, by a duly authorised representative of Danfo, specifying any variation to the Fee.

**6. Change to the Services**

**6.1.** The Supervising Officer shall be entitled to issue to Danfo reasonable instructions in writing requiring Danfo:-

(a) to vary the implementation programme for the Works and/or Equipment

(b) to vary the service level agreement as set out in Schedule 2 to improve standards

(c) to vary the opening times of the six Conveniences.

The Parties shall negotiate in good faith to agree any variation of the Fee.

**7. Ombudsman**

**7.1.** Danfo acknowledges that in performing the Services on behalf of the Council it may be subject to investigations carried out by the Local Government Ombudsman (the **“Ombudsman”**).

**7.2.** Danfo shall co-operate (including the provision of witnesses and the production of documents) in the carrying out of any investigation by the Ombudsman arising out of the provision of the Services.

**8. Fee**

**8.1** The Fee is subject to adjustment in accordance with the following:-

1. Change under Clause 5
2. Change under Clause 6
3. Change in law and/or regulation under Clause 8.5
4. Danfo will bear the cost, calculated on the basis set out in the second sentence of this paragraph of the first £500 of damage caused at any of the Conveniences to the Equipment in respect of each separate incident of vandalism. Any such costs in excess of £500 shall be charged by Danfo to the Council on the basis of the schedule of rates for labour and the current price list of Danfo for parts under the same shall be reimbursed under any insurance policy hereunder
5. Other items as agreed with the Supervising Officer

**8.2** The Fee is **“index linked”** which shall mean that such amount shall be increased or decreased as at the commencement of each calendar year in the same proportion as the increase or decrease (as the case may be) in RPI from its level as at 1st April previous year to its level as at 1st April of the calendar year immediately preceding the date as at which such determination is to be made

**8.3** If the basis of computation of the indices shall change any official reconciliation between the bases of computation published by the relevant Government Department shall be binding upon the parties and shall be applied in adjusting the application of the said index hereto.

**8.4** In the absence of such official reconciliation such adjustments shall be made to the figures of the indices as to make it correspond as nearly as possible to the previous methods of computation and such adjusted figures should be used to the exclusion of the actual published figures (unless and until officially reconciled figures are published) and in the event of dispute regarding an adjustment the decision of the Council shall be final.

**8.5.** In the event that any change in law or Regulation shall have an adverse effect on the performance of the Works or Services or the supply or operation of the Equipment then the provisions of Clause 5 shall apply as if there is a Change to the Work or the Equipment.

**9. Payment and Conveniences Income**

**9.1.** Unless otherwise agreed entry to the Conveniences shall be subject to the payment of an entrance fee being the Conveniences Income.

**9.2.** Danfo will be responsible for the collection of the Conveniences Income and shall bear the loss of any theft therefrom.

**9.3** The Council hereby assigns to Danfo all its right title and interest in the Conveniences Income which shall be applied by Danfo as follows:

**9.3.1** Firstly towards payments of the Fee due and payable to Danfo during each year of the term of the contract commencing on the Commencement Date and ending on each anniversary thereof;

**9.3.2** Secondly on each anniversary of the Commencement Date the payment of any surplus in excess of the Fee to the Council;

**9.4** In the event that there is no surplus Danfo shall render an Invoice to the Council in respect of the balance of the Fee.

**9.5** In the event of failure of the Council to make payment in accordance with this Agreement the Council shall pay interest on the overdue balance of the Fee equivalent to 1% over the National Westminster Bank base rate on the due date.

**9.6** In the event of variation of such base rate being announced while such balance remains overdue, the interest payable to Danfo for the remaining period that such Fee balance remains overdue shall be correspondingly varied for the date of each such variation. Interest shall be compounded monthly.

**9.7** The Conveniences Income shall be subject to such increase as the Council and Danfo shall from time to time agree. Neither Danfo nor its employees shall solicit or accept any gratuity, tip or any other form of money or reward collection or charge for its Services save for the Conveniences Income.

**9.8** Danfo will provide to the Council and its auditors upon request all information relating to the Conveniences Income.

**10. Vandalism**

Danfo will ensure that throughout the term of this Agreement any damage caused, to the Conveniences by vandalism is repaired or removed as soon as is reasonably practicable up to a value of £500.

**11. Utility Services and NNDR**

Danfo will initially pay for all Utility Services charges including gas, electricity, water, and sewerage together with NNDR which charges shall be re-imbursed by the Council to Danfo upon receipt of Danfo’s invoice in respect thereof.

**13. Permissions**

Danfo shall use all reasonable endeavours to obtain the Permissions to include (without limitation) any Planning, Highways and Building Regulations consents. Any fees incurred in obtaining the necessary permissions shall be borne by Danfo entirely.

**14. Consent**

The Council shall be responsible for and shall pay all reasonable costs in connection with obtaining the consent of any third party interested in the Conveniences necessary for the observance and performance by Danfo of its obligations under this Agreement in the manner set out herein.

**15. Sub-Contracting**

**15.1.**Danfo may, subject to Clause 15.3., delegate performance of all or any of its obligations or responsibilities under this Agreement to one or more sub-contractors and the terms of such delegation may, without prejudice to Clause 15.3, include a right to sub-delegate. Any sub-contractor or sub-delegate shall act as agent to Danfo.

**15.2.**Danfo shall on each anniversary of this Agreement or at the Council’s request provide the Council with a written list of any persons to whom it has delegated obligations or responsibilities (either directly or indirectly) pursuant to Clause 15.1.

**15.3.**Danfo shall, notwithstanding any delegation of responsibility or obligation pursuant to this Clause remain liable to the Council for the performance of its obligations and responsibilities under this Agreement and will ensure that the standard under the Service Level Agreement under Schedule 2 hereof is maintained at all times.

**16. Materials**

All materials required to be used in the performance of the Services must be used and stored as specified in the Food and Environmental Protection Act (FEPA) 1985 and the Control of Substances Hazardous to Health Regulations 2004 (COSHH), or any amendments and any other statutory obligations or legislation that may apply from time to time.

**17. Equipment**

**17.1.**Danfo shall, at all times during the term of this Agreement, provide and maintain the Equipment as is necessary for the proper performance of the Services.

**17.2.**The Equipmentmust be either owned by Danfo, hired by Danfo pursuant to a contract of simple hire (and not hire purchase), or leased by Danfo. Any such hire or lease contract must contain a clause permitting Danfo, with the consent of the Council, to assign the benefit of the contract to the Council.

**17.3.**Danfo shall licence all Equipment as required by law and will be responsible for the payment of all licensing fees, taxes and insurances payable in connection with or arising out of the possession or use of the Equipment employed in the performance of the Services.

**17.4.**Danfo shall at its own expense keep all Equipment in good and serviceable repair and in such condition as is commensurate with the proper performance by Danfo of its obligations under this Agreement.

**17.5.**Subject always to the provisions of Clause 25 upon the expiry or termination of the Agreement, whichever shall first occur, the Council shall be entitled to serve upon Danfo a notice in writing requiring Danfo to sell to the Council upon payment of the Termination Fee pursuant to Clause 26 such Equipment as may be specified in the notice and to assign to the Council the benefit of all contracts relating to the hire or lease of such Equipment as may be specified in the notice and in neither case need the notice be confined to such items of Equipment as Danfo may have acquired from the Council.

**17.6.**Subject always to the provisions of Clause 25 upon receipt of a notice under Clause 17.5 requiring Danfo to sell any item of Equipment to the Council and upon receipt of the Termination Fee pursuant to Clause 26 Danfo shall forthwith deliver such Equipment to the Council in such condition as it may be at the date of the notice

**17.7.**Subject always to the provisions of Clause 25 and upon payment of the Termination Fee pursuant to Clause 26 upon receipt of a notice under Clause 17.5 requiring Danfo to assign to the Council the benefit of any agreement for the hiring or leasing of any item of Equipment, Danfo shall forthwith execute all documents necessary to effect such an assignment and shall deliver such Equipment to the Council in such condition as it may be at the date of the notice. The Council shall thereafter indemnify Danfo in respect of any liability arising under such hiring or leasing contract after the date of such assignment save where such liability arose from or was contributed to by any breach of the hiring or leasing contract by Danfo prior to such assignment.

**17.8.**Danfo shall cause all Equipment to bear such words, devices or insignia as the Supervising Officer may require and shall cause all Equipment to be painted in such colours as the Supervising Officer may require.

**17.9.**At the Commencement Date and, thereafter, whenever requested to do so in writing by the Supervising Officer, Danfo shall supply to the Supervising Officer full details of all Equipment used or held by it for use in connection with the performance of the Services (whether such Equipment be owned, hired or leased by Danfo) and shall, in respect of any such Equipment, supply such further particulars as the Supervising Officer may reasonably require.

**17.10.**Danfo shall supply to the Supervising Officer an up-to-date list of all Equipment such details to be supplied within seven days of the date of acquisition of the Equipment concerned and shall, before disposing of any Equipment used or held by it , notify the Supervising Officer in writing of its intention to do so.

**17.11.**Equipment used shall comply with the relevant Statutory Regulations and shall in all respects be entirely suitable for the performance of the Services. Danfo shall ensure that it has an adequate level of reserve Equipment available to it at all times. Lack of suitable Equipment will not be accepted as a reason for non-performance of the Services.

**18. Danfo’s Employees**

**18.1.**Danfo shall at all times during the term of this agreement employ sufficient persons with sufficient qualifications, abilities and skills for the proper performance and supervision of the Services.

 Danfo will ensure that the skills of all employees are developed, in order to keep pace with changes in the public convenience sector.

**18.2.**Danfo shall appoint a Contract Manager empowered to act on behalf of Danfo for all purposes connected with this Agreement. Any notice, information, instruction or other communication given to the Contract Manager shall be deemed to have been given or made to Danfo.

**18.3.**Danfo shall give notice in writing to the Supervising Officer of the identity, address and telephone numbers of the persons appointed Contract Manager and Deputy Contract Manager and subsequent appointments.

**18.4.**Danfo shall comply with all relevant requirements of the Health and Safety at Work, Act 1974 and of any other Acts or Regulations pertaining to the health, safety or welfare of persons.

**18.5**.Danfo shall be responsible for the payment of all income or other taxes, national insurance contributions or levies of any kind, relating to or arising out of the employment of any person employed by Danfo and shall fully and promptly indemnify the Council in respect of any liability of the Council in respect thereof.

**18.6.**Danfo shall ensure that whilst performing the Services its employees shall observe and comply with all relevant provisions of this Agreement and do no cause any nuisances or disturbance.

**19. Clothing and Identification**

**19.1.**Danfo shall ensure that all persons employed in the performance of the Services, including supervisors, shall at all times be suitably attired and that the clothing provided shall be adequate and sufficient to afford protection to the employees in the performance of their duties.

**19.2.**Representatives of Danfo shall carry at all times identity cards in a form approved by the Supervising Officer and make such cards available for inspection on request by any Officer of the Council who similarly discloses his identity.

**19.3.**When requested to do so, or when communicating with other persons as a representative of Danfo, all persons employed by Danfo in the performance of the Services shall disclose their identity and shall not attempt to avoid doing so.

**20. Agency**

**20.1** Danfo shall under no circumstances hold itself out as being the agent of the Council.

**20.2** Danfo shall under no circumstances hold itself out as being authorised to enter into any agreement or contract on behalf of the Council or in any other way to bind the Council to the performance, variation, release or discharge of any obligation.

**20.3** Danfo shall under no circumstances hold itself out as having the power to make, vary, discharge or waive any bylaw or regulation of any kind.

**20.4** The employees of Danfo shall not hold themselves out to be and shall not be held out by Danfo as being servants or agents of the Council for any purposes whatsoever.

**21. No Partnership**

**21.1** Nothing in this Agreement and no action taken by the Parties under this Agreement shall constitute a partnership, association, joint venture or other co-operative entity between either of the Parties.

**21.2** The Council acknowledges that Danfo is an independent contractor and nothing contained in this Agreement shall be construed as constituting any relationship with the Council other than that independent contractor, nor shall it be construed as creating any relationship whatsoever between the employees of the Council and the employees of Danfo. Neither Danfo, nor any sub-contractor nor any of its respective employees is, or shall, be deemed to be employees of the Council.

**22. Liability**

**22.1** Notwithstanding any other provision of this Agreement neither Party shall be liable to the other Party in respect of this Agreement or the transactions contemplated hereby for any claims for punitive, special, exemplary, incidental, indirect or consequential damages including damages for loss of profits, loss of goodwill, loss of use of revenue or loss of anticipated savings, regardless of whether the claim is based on contract, warranty, tort (including negligence), strict liability, violation of any applicable law or Regulation or otherwise.

**22.2** Each party further agrees to indemnify and hold harmless the other party against all claims made against the other party by third parties (being those individuals and legal entities for whom no party hereunder is responsible or connected) in any way related to this Agreement where such claims are caused by, or to the extent that they are contributed by the indemnifying party’s negligence or deliberate default whether caused by it or its agents or sub-contractors.

**22.3** The indemnifying party shall bear all costs of investigating and defending all claims under Clause 22.2 including all legal costs of the indemnified party.

**23. Insurance**

**23.1** Danfo shall take out and at all times maintain in force such policies of insurance with reputable insurers or underwriters in respect of:-

1. Any claims or proceedings in respect of claims for personal injury to, or death of, any person under a Contract of Service or apprenticeship with Danfo and arising out of and in the course of such person’s employment. Such insurance shall comply with the Employers Liability (Compulsory Insurance) Act 1969 and any Statutory Orders made there under. The insurance to which this sub-clause applies shall be for a minimum amount of £10,000,000 for any one accident or series of accidents arising out of one instance unlimited during the period of insurance or such larger sum as may be required by Statutory Regulation or as the Supervising Officer may from time to time reasonably require.
2. Danfo shall maintain public liability insurance for an amount up to £2,000,000 for any one incident.

**23.2** Danfo shall, before commencing to perform the Services and thereafter annually and at such other times as the Council may require, supply the Council with copies of all insurance policies, cover notes, premium receipts and other documents necessary to evidence compliance with Clause 23.1.

**23.3** The Council shall be entitled to notify Danfo in writing that in the opinion of the Council any such policy of insurance does not effect sufficient cover to comply with this Agreement and to require Danfo to effect such insurances as will so comply. Upon receipt of such notice, Danfo shall forthwith procure and effect such insurance as the Council shall require and in default the Council may themselves cause such insurance to be effected, whereupon Danfo shall pay to the Council as damages such sum as the Council shall certify as being the cost to the Council of effecting such insurance.

**23.4** The Council shall at all times insure and keep insured the buildings of the Conveniences in an amount not less than full reinstatement value against loss or damaged by such risks as are normally covered by buildings insurances and shall procure that in the event that the conveniences or any one or part thereof are destroyed or damaged by any risk insured under such policies the same shall be rebuilt and reinstated.

**23.5** The Council shall take out and at all times maintain in force such policies of insurance with reputable insurers or underwriters in respect of loss or damage to the Works or the Equipment; such insurance to be in a sum of at least £10,000,000 in respect of any one accident or series of accidents arising from any one incident unlimited during the period of the insurance or such larger sum as the Supervising Officer may from time to time reasonably require.

**24. Liability of the Council**

**24.1** The Council shall be liable for any loss or damage to the Works or the Equipment howsoever arising

**25. Termination**

**25.1** The Council shall be entitled at any time to terminate this agreement with immediate effect by giving written notice to Danfo if:

1. Danfo commits a material breach of any provision of this agreement and fails to remedy that breach within a period of 120 days after being notified in writing by the Council pursuant to clause 4.3
2. Danfo having a receiver, or an administrator or a liquidator appointed or being the subject of a resolution or an order is made for or in connection with the winding up of Danfo PROVIDED that solvent amalgamation or solvent reconstruction of the limited company shall not be deemed as a breach of this clause.

**25.2** Danfo shall be entitled at any time to terminate this agreement if the Council fails to pay any amount under this agreement on the due date for payment and remains in default not less than 120 days after being notified in writing by Danfo to make such payment.

**26. Consequences of Termination**

Upon termination of this Agreement under Clause 25 the consequences of such termination are as follows:

(i) Danfo shall forthwith cease to perform both the Work and the Services;

(ii) the Council shall forthwith pay to the Termination Fee to Danfo as calculated under the provisions of Schedule 4 in respect of the Work, Equipment and Services in the event that the Council or Danfo shall have terminated this Agreement pursuant to the provisions of Clause 25.

**27. Force Majeure**

**27.1** In the event that the performance of the Works or Services or the supply of the Equipment shall be frustrated by any supervening event which may occur independently of the will of the parties (a “Force Majeure Event”) and such event shall continue for a period in excess of 270 days then this Agreement may be terminated by either party pursuant to the provisions of Clause 25 and thereafter the provisions of Clause 26 shall apply

**27.2** Danfo shall not be liable for the failure to perform its obligations hereunder should a Force Majeure Event occur.

**28. Notices**

**28.1** No notice to be served upon the Council shall be valid or effective unless it is sent by prepaid post or delivered by hand to the Supervising Officer, or to such other person and address as the Supervising Officer may notify Danfo in writing.

**28.2** Any notice to be served upon Danfo shall, except where otherwise specified in this Agreement, be valid and effective if it is sent by prepaid post or delivered by hand to the registered office address of Danfo or is delivered by hand to a Director, or the Contract Manager.

**29. Arbitration**

**29.1** In the event of any dispute which may arise between the parties the matter shall be referred to the arbitration of a person to be agreed between the parties or (if the parties fail to appoint an arbitrator within one calendar month of either party serving on the other party a written notice to concur in the appointment of an arbitrator) a person to be appointed on the application of either party by the President for the time being of the Law Society.

**29.2** If an arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the parties do not within one calendar month of the vacancy fill the vacancy, then the President for the time being of the Law Society may on the application of either appoint an arbitrator to fill the vacancy.

**29.3** Any such reference to arbitration shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996.

**29.4** The award of the arbitrator shall be final and binding on the parties.

**30. Legal and Local Requirements**

 **30.1** In all respects Danfo shall perform the Programme in a lawful and proper manner and, without prejudice to the generality of the foregoing, shall comply with all statutory and other legal requirements to be observed or performed.

**30.2** As far as is appropriate, Danfo shall comply with any of the special requirements in relation to the Utilities Providers.

**31. Equal Opportunities**

**31.1** Danfo shall adopt a policy to comply with its statutory obligations set down in the Race Relations Act 1976 as amended and, accordingly, shall not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin in relation to any decision to recruit, train or promote its staff.

**31.2** Danfo shall, on request, provide the Council with examples of the instructions and other documents, recruitment advertisements and other literature.

**31.3** Danfo shall observe, as far as possible, the Commission for Racial Equality’s Code of Practice on Racial Equality in Employment published 2005, which give practical guidance to employers and others, on the elimination of racial discrimination and the promotion of equality of opportunity in employment, including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities. Danfo shall provide such information as the Council may reasonably request for assessing Danfo’s compliance with this Code of Practice.

**31.4** If any Court or tribunal, or the Commission for Racial Equality, should make any finding of unlawful discrimination against Danfo, then Danfo shall forthwith take all necessary steps to prevent a recurrence of such unlawful discrimination. The Council may require Danfo to supply full details of the steps taken to prevent such recurrence.

**31.5** Danfo shall not, in relation to the employment of persons for the purposes of providing the Service, discriminate against a person contrary to the Disability Discrimination 1995 and Sex Discrimination 1975 Acts.

**32. Rights and Duties Reserved**

All rights and duties which the Council has as a Local Authority or which the Council’s Officers have as Local Authority Officers are expressly reserved.

**33. Confidentiality**

**33.1** Neither party shall not divulge or dispose or part with possession, custody or control of any confidential material or information given by one party to the other pursuant to the Agreement, or prepared or obtained by either party pursuant to this Agreement, other than in accordance with the express written agreement of the other party.

**33.2** Each party shall indemnify and keep indemnified the other against all actions, claims, demands, proceedings, damages, cost, charges and expenses whatsoever in respect of any breach of confidentiality.

**34. Environmental Claims**

**34.1** The Council shall be responsible for and shall take any and all such actions as may be required in respect of any Environmental Claim however arising in respect of the land, and the buildings forming part of the Conveniences but not the Programme or in respect of any neighbouring land in the ownership of the Council unless such Environmental Claim shall be as a consequence of the Danfo’s breach or failure to perform its obligations under this Agreement and/or of Danfo’s negligence or that of its employees, contractors and agents.

**34.2** Danfo shall be responsible for and shall take any and all such actions as may be required in respect of any Environmental Claim howsoever arising in respect of the Programme or otherwise arising in respect of the performance by the Danfo of its obligations under this Agreement.

**35. Advertising**

Danfo will endeavour to procure advertising revenue from the Conveniences and shall share any advertising revenue with the Council in such proportion as shall be agreed.

**36. Governing Law**

This Agreement is to be governed by and construed in accordance with the law of England and Wales.

**SCHEDULE 1**

###### Public Conveniences Provision

**New Quay Road**

Provide Paddlegate Entry system within the foyer area.

Repair or replace all defective fittings and fixtures.

Prepare floor surface to receive a new texture coating or similar.

Redecorate internally.

Investigate the need for the existing showers and ascertain the usage and decide course of action if retained.

Deep clean after works completed.

**Market Place**

Adjust internal layout of Gents toilet by removing a WC and make good.

Reposition the existing WC.

Clean off the surfaces to all walls tiling and either repaint with a good quality paint or retile over existing surfaces.

Clean off existing floor tiles and prepare to receive new tiles or a suitable surface covering.

Provide Paddlegate entry system to ladies and gents.

Redecorate internally.

Deep clean after works completed.

**West Cliff**

Install 2 Unisex WC’s adjacent to the current disabled facility.

Provide coin box entry to all units.

Close down the current facility and investigate potential commercial use or future.

**Abbey Car Park**

Provide Paddlegates entry system to ladies and gents.

Investigate area of dampness where surface has failed and remedy.

Improve lighting.

Improve internal decorations to brighten up the interior.

Deep clean after works completed.

**Khyber Pass (new facility)**

Ensure current disabled facility can only be accessed with RADAR key – there appears to be a wiring problem.

Short courtesy screen required.

**Ruswarp**

No plans to do anything at this location.

Deep clean.

N.B The above Works may be subject to change pursuant to the provisions of Clauses 3.1 and 5.1 of the Agreement.

**SCHEDULE 2**

**Whitby Town Council**

Public Conveniences Provision and Management

Service Level Agreement

**Service Level Agreement**.

**Methodology Introduction**.

Danfo currently services some 40 contracts nationwide and has over 40 years experience in the provision and management of Public Conveniences.

This contract calls for the refurbishment and management of 6 toilet facilities within the town of Whitby. It is the Council’s intention to contract out the refurbishment and improvements and subsequent management of the facilities to an external provider for a period of 10 years.

Danfo considers our experience at refurbishing and managing public toilets to be second to none. We have the knowledge and expertise and resource to carry out such projects and to manage over a given contract period. Danfo has also no doubt that the facilities it provide and manages will satisfy the requirements of the contract period.

Danfo has the knowledge and experience of providing the appropriate resource to meet the needs of the Council. Danfo also has the ability to adjust this resource to meet the demands of the service provision to take account of any seasonal or local fluctuations.

Danfo has considered the specification as provided by the Council and undertaken some work to determine how we may ensure compliance. The areas we have considered include:-

* Resourcing.
* Cleaning Schedule
* Responsive Cleaning
* Mobile Cleaning regime
* The use of sustainable consumables
* Training and Supervision
* Management and Support from Operations Office – Blackpool
* Programme of improvements to the current portfolio

All the above will ensure compliance with the specification.

**Public Toilet Cleaning**

The cleaning of the public toilets will be carried out by mobile staff working a 7 days per week. A shift system will be employed to provide this cover.

All staff will be supervised by a mobile working foreman. This role will be to ensure adequate resource at all times is provided with the local employees along with support from Operations Head Office in Blackpool. This includes sickness, holiday, training cover etc.

**Mobile Staff**

Danfo will use mobile personnel to provide the cleaning at all the sites. This will be supplemented by cover and supervision staff as required.

Appropriate transport will be provided as required.

**Supervisory Staff**

Danfo will provide supervisory staff who will carry out the day to day management of the contract with support from the local personnel.

Supervisory staff will report into the Operational team.

A monthly report will be provided for the Client Officer which has the following information:-

1. Usage Figures
2. Income
3. Cleanliness standard
4. Incidents at each location
5. Meter Readings
6. Repairs and spares
7. Complaints
8. any other requirements from the client

**Method of Cleaning**

Danfo has defined Cleaning Regime which it has developed over the years and that is attached.

**Equipment**

Danfo will provide appropriate materials and equipment to carry out the cleaning and servicing of the units on a daily basis.

1. Cloths Buckets and Gloves

For reasons of hygiene it is necessary to have separate systems for cleaning some areas of the public toilets. This is to prevent any cross contamination and colour coordinated clothes are used for this purpose.

1. Equipment

As part of the cleaning process appropriate equipment is provided. This will include but not be limited to: mops, buckets, gloves, cloths, scourers, plungers, toilet brushes, sharps containers, litter picking equipment, brushes, brooms and dusters. All are required to clean floors, the exterior and interior of the facilities, polish metal work, clean mirrors, ledges and equipment.

1. Outflows and external area

Suitable equipment will be provided to clean outflows and external areas. Brushes and brooms as appropriate.

1. Cleaning Products

The cleaning products used will be selected from the following grounds:-

* Suitable for use
* Ease of use
* Following COSHH assessment considering the product, its ingredients, its intended use, manufactures Materials Safety Data Sheet and with regards to the environment and the safety of the user and any other persons who may come into contact with the product.
* Performance
* Any other requirements of the Council.

Danfo potentially can use a number of suppliers subject to assessments as appropriate. From time to time manufacturers and our suppliers will bring out new products which we may use and test. We will then evaluate the potential use prior to introducing into our cleaning regimes.

We anticipate the use of such materials for the cleaning of the public toilets but would expect to confirm list of agents with the Town Clerk.

**Keys**

Each mobile or static member of staff will have a set of keys to allow access to all areas required to satisfy the needs of the service provision within the contract. Additional keys will be held by the supervisor and members of staff at the Operations Office in Blackpool.

**Materials and Equipment including Consumables**

At all times there will be sufficient materials and equipment available to service the contractual obligations. These will be stored at each location and have the ability to be replenished as appropriate.

It will be the responsibility of the local and supervisory staff to ensure that there are sufficient supplies and equipment at all times. Stock control measures will be employed to monitor use and performance.

**Odour Control**

We are aware that there needs to be a pleasant odour within the toilets at all times and we will achieve this by a number of ways:-

1. Clean the facilities thoroughly including addressing the source of odours
2. Use appropriate cleaning products
3. Check for contaminated areas
4. Use products that have a pleasant smell
5. Use as appropriate deodorising products

**Reactive Service**

There are likely to be occasions where we as contactor need to react to certain criteria. This could be a vandalism attack, service adjustment to meet seasonal or a local event, exceptional soiling of the unit, power failure etc.

We have over 40 years experience in the management of public toilets so nothing shocks us! We have the ability and will to meet all reactive issues by using both local and centralised personnel.

We have over 85 staff UK wide who have the ability and flexibility to react to these issues. This will also include holiday and sickness cover. All staff would be Danfo directly employed staff we do not employ subcontractors for management of public toilets contracts.

**Signage**

Polite notices informing the public that works are being carried out will be displayed at all times.

Danfo normally puts an external sign telling users that they are working in partnership with the Town Council and giving contact details so any contact with users should be directed away from the client officer.

In the event of a toilet needing to be closed for whatever reason appropriate signage will be provided and indicating an alternative location.

Any forms of notice to be agreed with the Town Clerk.

**Branding**

We would expect that any Danfo’s vehicle and uniform will carry the company logo.

**Surrounding Areas**

Danfo takes pride on its service provision and would ensure at all times that areas adjacent to the building are cleaned as appropriate.

**Opening and Closing**

The toilets will be opened and closed at times to be agreed with the Town Clerk

During manual locking the building will be inspected to ensure that there are no persons inside or anything untoward prevails.

During lock down electrical equipment will be switched off and any cleaning issues attended to.

**Maintenance**

Light maintenance will be carried out by the local personnel supported by the mobile supervision. More involved or heavy maintenance will be scheduled through the Maintenance Controller based in Blackpool. It is not intended that there will be any reduction in service relating to routine maintenance issues.

**Damage**

Any damage found will be reported immediately to the Maintenance Controller who will liaise with the Operations Manager and appropriate action agreed. This will be conveyed to the Client Officer.

At all times Danfo carries approximately £100k of spares to support any requirement and has the ability to have them at a given location the next working day.

**Graffiti**

Danfo’s toilet design has evolved over the last 40 years and the internal surfaces are such that the removal of graffiti is a mere wipe of a cloth and can be dealt with routinely within the cleaning service regime.

External graffiti can be removed using proprietary methods as we carry out on all contracts.

Our proposal is that we will include the removal of such as part of the contract.

Offensive material will be removed immediately.

**Sharps**

Any sharps found will be disposed of appropriately.

All operatives will be trained in the handling and preparation for disposal of sharps.

**Waste**

Danfo is licensed by the Environment Agency for the carrying and disposal of waste.

Waste will be collected within the receptacles provided and disposed of in an appropriate method at the local Waste handling facility.

All staff will be trained in the safe handling of waste.

**Planning, Key Dependencies and Implementation**

The process of the contract start up commences at the contract award date with all processes and actions plotted to ensure a seamless transition from the previous provider.

Key effective mobilisation is a clear plan which sets out the path from contract award through the various stages to achieve the refurbishment and management of the facilities. These will include the following:-

1. Taking over existing provision.
2. Programme of work
3. Transitional provision during works
4. TUPE implications
5. Vehicle acquisition if appropriate
6. Management structure
7. Training
8. Branding
9. Developing KPI’s
10. Purchase and supply of equipment
11. Stock of Consumables
12. Reporting regimes to be agreed

**TUPE**

This does not apply in any contractual arrangement with the Council or Scarborough Borough Council.

**Accreditations**

Danfo is accredited under the following:-

ISO 9001 – Quality Assurance

ISO 14001 – Environmental Management

IIP – Investors in People

**Client Liaison**

Danfo would set up a small implementation team which will be made up of key personnel (from both Danfo and the Council) who will be involved in the taking over the existing toilets and staff and discussing the transition period and arrangements.

Project Team would be involved in the refurbishment programme and would liaise with Town Clerk on this point.

**Continuous Improvement**

Danfo is committed to continuous improvement of its performance in respect of quality, environment, health, safety and welfare of staff and end users.

Any such changes will be brought up in regular progress meetings onsite and within the reporting and meeting cycle within the whole Company.

These will then be discussed with the Client Officer and implemented as appropriate.

**Maintenance Programmes & Procedures**

Danfo’s Maintenance programme is designed to ensure the highest quality environment for the general public.

The comprehensive programme is formulated on experience based on the principles of routine maintenance, response to faults, safety and preventative maintenance through constant inspection and monitoring.

A routine of daily inspection by trained Danfo Technicians ensures that all units are fully operational at all times.

Safety of our users and staff is a major priority for all Danfo maintenance activities. The safety features built into our designs are complimented by preventative maintenance programmes, which include visual inspections of fixings and fittings for daily wear and tear and periodic inspection and testing of equipment and the structure. This is followed up with inspections by management and experienced technicians.

Danfo’s commitment to maintenance ensures that our customers receive the highest standards of service, and our units are kept in pristine condition, both internally and externally to the benefit of the users, the client and the general environment.

Danfo’s range of products has been designed with cleanliness in mind internally and externally. Specialist materials are used in key areas to facilitate easy removal of graffiti.

Internally the walls are clad in super hard laminates, which facilitate the easy removal of graffiti and other offending material and together with a minimum of stainless steel create a high quality of environment for the user.

Routine maintenance is carried out at periodic intervals as follows:

**Daily**

* Heating and ventilation system checked for function, leave in full working order
* Check flushing systems of WC’s and urinals and adjust as necessary
* Check automated flushing of toilet and urinals
* Temperature of hand wash water checked and adjusted as required
* Check function of hand dryers
* Replenish all consumables
* Check all lighting internally and externally
* Clear all rubbish from unit and dispose of in accordance with The Waste Management Code of Practice
* Empty waste paper basket
* Check handrails in disabled unit
* Check door locks and closures adjust as required
* Check all fuses, settings and water heater functions
* Check functions of all push button operations
* Check disabled alarm system
* Check for signs of leakage
* Check external signage
* Check and empty coin boxes if applicable
* Clean and polish interior of unit
* Clean exterior if scheduled

**Quarterly Inspections**

A service engineer from Danfo will carry out a quarterly inspection of each toilet building with the local technician. All functions of the unit will be tested. Issues relating to maintenance and repairs will be discussed and any major repairs put in place unless previously notified. Extra ordinary repair and maintenance costs will be analysed and action taken to ensure continuous improvement and function of the unit is maintained.

**Cleaning**

Routine cleaning is carried out at periodic intervals as follows:

**Daily**

* Bag and remove all rubbish
* Treat and remove any graffiti
* Wash down all surfaces, walls, WC pan & seat, washbasin, doors and handles using spray detergent
* Remove any posters, stickers, gum etc.
* Clean out urinal strainer
* Empty rubbish containers and remove waste
* Wipe clean coin boxes
* Disinfect toilet bowl
* Dry off all excess water after completion of cleaning process
* Clean external walls and doors if required
* Carry out visual inspection of cleanliness before leaving site

**Weekly**

* Clean service area removing any excess rubbish
* Clean off any excess dirt, grime, graffiti from external walls
* Check and remove any rubbish from roof area and from rainwater goods

**Biannually**

* Clean out all rainwater gutters and downpipes
* Replace all heating and ventilation filters
* Using high pressure hose, wash all floors and fittings
* Dry off all excess water after completion of cleaning process

**Miscellaneous**

* Constantly look at and check all functions after every cleaning and maintenance operation
* Notify Operations Team of any major issues

**Preventative Maintenance**

The preventative regime is based on a system of regular physical inspections and testing of equipment. The key elements of preventative maintenance are as follows:

* Manual testing of all equipment on a regular basis
* Full quarterly inspections of the structure by a Danfo Service Engineer
* Daily visual inspection by a service personnel of fixtures and fittings

**General Response**

Danfo’s regime of routine and preventative maintenance backed up by response measures to defects ensures that the very highest standards of service are delivered to the customer at all times.

**Defects and Status Notification**

At all times during the cleaning and maintenance regimes a report back procedure exists where potential problems which cannot be dealt with locally can be directed to head office or an experienced technician at Danfo’s call centre which is maintained during office hours. Outside these hours, another call centre facility will be available.

|  |  |  |  |
| --- | --- | --- | --- |
| **Date:** |  | **Time:** |  |
| **Client:****(If applicable)** |  | **Customer:*****Address/Tel No:*** |  |
| **Details:** |  |
| **Findings:** |  |
| **Action taken as a result of the information:** |  |
| **Sign off by Supervisor:** |  | **Sign off date:** |  |

|  |  |  |
| --- | --- | --- |
| **Internal** | **External** | **Customer Complaint** |

 ***Tick above which box applies***

|  |  |  |  |
| --- | --- | --- | --- |
| **Date:** |  | **Time:** |  |
| **Client:****(If applicable)** |  | **Customer:*****Address/Tel No:*** |  |
| **Details:** |  |
| **Findings:** |  |
| **Action taken as a result of the information:** |  |
| **Sign off by:** |  | **Sign off date:** |  |

**SCHEDULE 3**

**Estimated Capital cost per Annum for Works and Equipment £ 7,560.00**

**Annual Cost of Services**

 **£110,000.00**

 **\_\_\_\_\_\_\_\_\_\_**

**Total £117,560.00**

N.B. All the above costs are based on a 10year term and are subject to

**uplift pursuant to Clause 8**

SCHEDULE 4

TERMINATION FEE

In case of termination due to the provisions of Clause 25 pursuant to Clause 26 the Council is obliged to compensate Danfo by payment of the Termination Fee calculated as follows:

The Council shall pay to Danfo the sum of £7,560.00 for each full year remaining under the Contract until the Expiry Date.

**IN WITNESS** of which this agreement has been duly executed in two counterparts.

**SIGNED** and **DELIVERED** as a **DEED**

by **WHITBY TOWN COUNCIL**

by its duly authorised signatory/ies in the presence of:

Signature(s)…………………………………………..

Name(s)………………………………………………

Address(es)……………………………………………

**The Common Seal of**

**DANFO (UK) LIMITED was**

**hereto affixed in the**

**presence of:**

……………………………………………….

DIRECTOR

………………………………………………

SECRETARY