



**CONTRACT**

Between

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LAMBETH**

and

**[SERVICE PROVIDER]**

DRAFT

## **THE CONTRACT**

The Contract shall comprise the following:

### **A. The Conditions of Contract comprising:**

- 1 Appointment
- 2 Definitions and Interpretations
- 3 Contract Term
- 4 The Service Provider's Obligations
- 5 The Service Provider's Representative
- 6 The Council's Obligations
- 7 The Council's Authorised Officer
- 8 Best Value and Risk Management
- 9 Responsible Procurement
- 10 VAT
- 11 Confidentiality
- 12 Indemnity
- 13 Insurance
- 14 Conflict of Interest
- 15 Monitoring of the Contract
- 16 Termination
- 17 Termination Consequences
- 18 Delivery up of Documents on Termination
- 19 Transfer of Undertakings (Protection of Employment) [TUPE]
- 20 Force Majeure
- 21 [Not Used]
- 22 Variations
- 23 Data Protection and Freedom of Information
- 24 Equal Opportunities
- 25 Policy documents
- 26 [Not Used]
- 27 Complaints in Respect of Service Provision
- 28 Disputes
- 29 Committee Meetings and other Meetings
- 30 Local Authority Functions
- 31 Waiver
- 32 Supersedes Prior Agreements
- 33 Entire Contract
- 34 Notices
- 35 Joint and Several
- 36 Assignment and Sub-Contracting
- 37 Third Parties
- 38 Governing Law

**B. Schedules to the Contract comprising:**

<b>Schedule 1</b>	<b>Service Specification</b>
<b>Schedule 2</b>	<b>Responsible Procurement</b>
<b>Schedule 3</b>	<b>Contact details</b>
<b>Schedule 4</b>	<b>Pricing Document and Payment Terms</b>
<b>Schedule 5</b>	<b>Schedule of Processing, Personal Data and Data Subjects</b>

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**CONTRACT FOR PROVISION OF AIR QUALITY MAINTENANCE AND MONITORING SERVICES**

**THIS CONTRACT** is made the                      day of                      2021

**BETWEEN**

(1)        **[Service Provider name]** (company reg: xxx) whose address for service within the jurisdiction of the courts of (England and Wales) is [address] (the 'Service Provider')

**AND**

(2)        **The Mayor and Burgesses of the London Borough of Lambeth**, Lambeth Town Hall, Brixton Hill, London SW2 1RW ('the Council')

(each a 'Party' and together 'the Parties')

**1 Appointment**

1.1        The Council wishes to commission the Service Provider to provide a supply chain assurance service to the Council in accordance with the Conditions of Contract, the Service Specification, Schedules and any appendices herewith.

**(CONDITIONS OF CONTRACT)**

**2 Definitions & Interpretations**

2.1 Definitions

Authorised Officer                      is the officer whose contact details are listed in Schedule 2, or any person whose name has been notified in writing by or on behalf of the Council to the Service Provider in accordance with Clause 7

Commencement Date                      shall be the date the date stated in Clause 3.1 or, if none is stated, the date on which the Service Provider first delivers the Services to the Council

Contract                                      means the Contract entered into by the Council and the Service Provider embodied in the Conditions of Contract and the Contract Documents

Contract Documents                      mean the Terms and Conditions of Contract, the invitation for quotation documents, the Service Provider's

	Quotation/Proposal and other documents submitted with it, and all other Schedules
Contract Standard	<p>means such standards as complies in each and every respect with all relevant provisions of the Contract Documents and where to the extent that no criteria are stated in the Contract the standard is to be to the entire satisfaction of the Authorised Officer and in any event to the following standards:</p> <ul style="list-style-type: none"> <li>• in a good, safe and efficient manner in accordance with good practice and highest professional standards</li> <li>• in accordance with all relevant provisions of the Contract Documents</li> <li>• in accordance with all applicable statutes, statutory instruments, rules, regulations and byelaws</li> </ul>
Council	means the Council of the Mayor and Burgesses of the London Borough of Lambeth, Lambeth Town Hall, Brixton Hill, London SW2 1RW
Data Protection Legislation	means (i) the General Data Protection Regulation ('GDPR'), (ii) the Law Enforcement Directive and any applicable domestic implementing legislation as amended from time to time, (iii) the Data Protection Act 2018 ("DPA") (iv) all applicable laws about the processing of personal data and privacy
Employees	means directly employed staff and agency and locum staff and any agents of the Service Provider
Force majeure	<p>means:</p> <ul style="list-style-type: none"> <li>• acts of war</li> <li>• acts of God</li> <li>• decrees of Government</li> <li>• riots</li> <li>• civil commotion; and</li> <li>• any event or circumstance beyond the control of, or unpreventable by, the affected Party other than any labour dispute between the Service Provider and his Employees or the failure to provide the Services by any of the Service Provider's sub-contractors</li> </ul>
Pricing Document	comprises Schedule 4 and includes the Service Provider's Quotation

Schedules	mean the Schedules attached to these Conditions
Services	means the services required to provide the outcomes set out in the Specification at Schedule 1 and which are to be delivered by the Service Provider
Service Provider	has the same meaning as [Service Provider] and its Employees, agents and sub-contractors
Service Provider's Representative	means the person who is to represent the Service Provider appointed pursuant to Clause 5.1, whose contact details are listed in Schedule 3
Term	means the period the Services shall be provided by the Service Provider from the Commencement of the Services to the completion of all work required under the Contract.
Variation	has the meaning ascribed to it in Clause 22

#### 2.1 Interpretation

- a. Words in the singular include the plural and vice versa;
- b. Words in the masculine include words in the feminine and vice versa
- c. Words importing individuals shall be treated as importing corporations and vice versa;
- d. Headings are for ease of reference only and shall not affect the construction of the Contract; and
- e. Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to such enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument;
- f. The word 'including' shall be understood as meaning 'including without limitation'.

### 3 Contract Term

- 3.1 The Contract Term (the 'Term') is the two year period commencing on 28th April 2021 and ending on 27<sup>th</sup> April 2023 unless either terminated in accordance with this Clause 3 or Clause 16 (Termination) of this Contract or extended by agreement.
- 3.2 The Council may terminate this Contract where any of the grounds listed in Regulation 73(1) of the Public Contracts Regulations 2015, in the reasonable belief of the Authorised Officer, apply to this Contract. In such circumstances the Council may give reasonable notice of termination, and the Parties agree and acknowledge that 30 days' notice in writing will constitute reasonable notice.
- 3.3 This Contract does not constitute an exclusive agreement between the Parties and the Council shall be entitled to employ other persons to provide similar services to the Services.

#### **4 The Service Provider's Obligations**

- 4.1 During the Term the Service Provider shall perform the Services specified in the Service Specification in accordance with the Contract Standard.
- 4.2 The Service Provider shall at all times comply with the requirements of the Health and Safety at Work, etc. Act. 1974, the Management of Health and Safety at Work Regulations 1992 (including the provision by the Service Provider of a copy of its risk assessment under these Regulations when requested by the Council), and of other Acts, Regulations, Orders or rules of law pertaining to health and safety. The Service Provider shall also ensure the health and safety of members of the public, the Council's employees, agents and contractors.
- 4.3 Except for any intellectual property which the Specification specifies will vest in the Council, the Service Provider shall own the copyright in all intellectual property that arises or is obtained by or developed by the Service Provider in respect of, or in the course of, or in connection with, the Services ("the Intellectual Property Right Work"). The Service Provider hereby grants to the Council a royalty-free licence in perpetuity to use and reproduce the Intellectual Property Right Work for all purposes relating to the Services. The Council shall also be entitled to grant sub-licences to others. If requested by the Council the Service Provider shall deliver to the Council all documents produced under the Contract. The Service Provider shall be entitled to retain a copy of all the documents as required by its insurers. The Service Provider shall indemnify the Council against all costs and damages associated with infringements of intellectual property rights in relation to the Services provided by the Service Provider.
- 4.4 The Service Provider shall, at all times during the Term, assign to the Services sufficient, qualified and experienced Employees to ensure that the Services are provided in accordance with the Contract Standard.
- 4.5 The Service Provider shall as may be necessary or desirable co-operate, liaise with and co-ordinate its activities with those of any other Service Provider or sub-contractor employed directly or indirectly by the Council and shall provide the Services in harmony with and at no detriment to any other service provided by or on behalf of or to the Council.
- 4.6 The Service Provider, upon the formation of the Contract and at all times throughout the Contract Term, warrants and represents to and undertakes with the Council in the terms set out in its proposal.

#### **5 The Service Provider's Representative**

- 5.1 The Service Provider shall appoint a senior person as a representative empowered to act on behalf of the Service Provider for all purposes connected with the Contract. Such appointment or any further appointment shall be subject to the approval of the Council.

5.2 The Service Provider shall ensure that the Service Provider's Representative, or a competent deputy authorised by the Service Provider, is present at all work-places of the Service Provider, where work in connection with the Services is being carried out, and available to meet the Authorised Officer or representatives at all reasonable times.

## **6 The Council's Obligations**

6.1 In consideration of the services rendered by the Service Provider under this Contract the Council shall pay the Service Provider in accordance with the provisions of Schedule 4.

6.2 It is a condition of this Contract that the Council shall pay all properly presented valid invoices within 30 days.

## **7 The Council's Authorised Officer**

7.1 The Authorised Officer shall be the person defined in this Contract and named in Schedule 3 or such other person nominated in writing by the Council from time to time to act in the name of the Council for the purposes of the Contract.

7.2 The Authorised Officer shall have power to issue Instructions to the Service Provider on any matter relating to the provision of the Services, and the Service Provider shall comply therewith.

## **8 Best Value and Risk Management**

8.1 The Service Provider acknowledges that the Council is under a Best Value duty (Local Government Act 1999) to make arrangements for continuous improvement in the way in which its functions are exercised. The Service Provider shall at no additional charge provide reasonable assistance to the Council if the Authorised Officer identifies and requests steps which the Service Provider may reasonably take in furthering the Council's discharge of its duties.

8.2 The Service Provider agrees to assist the Council in respect of combatting fraud and corruption perpetrated by Employees abusing their position and by others who may attempt to obtain the Council's assets or services to which they are not entitled. If the Service Provider has any suspicions in this regard he should seek advice from the Head of Internal Audit and Counter Fraud, Civic Centre, 6 Brixton Hill London SW2 1EG.

8.3 The Service Provider shall have and maintain adequate procedures in place to prevent fraud, bribery, money-laundering and corruption in line with legislation including, but not limited to, the Terrorism Act 2000, the Proceeds of Crime Act 2002, and the Bribery Act 2010.

8.4 The Service Provider shall comply with the conditions of employing foreign nationals under the Asylum and Nationality Act 2006.



8.5 Breach of any of Clauses 8.3 and 8.4 will usually constitute a breach incapable of remedy within the meaning of Clause 16.2(a) justifying immediate termination but the Authorised Officer may deem it capable of remedy within his absolute discretion and only if it is lawful to do so.

## **9 Responsible Procurement**

9.1 The Service Provider shall endeavour to deliver Social Value through the provision of the Services and shall assist the Authorised Officer in capturing and measuring the Social Value so delivered.

9.2 The Special Conditions in Schedule 2 incorporate the relevant terms and conditions of the Council's Responsible Procurement Policy, and the Service Provider shall comply with them.

## **10 VAT**

10.1 All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes.

## **11 Confidentiality**

11.1 The Service Provider shall not at any time during or after the Term divulge or allow to be divulged to any person any confidential information relating to the functions or affairs of the Council to a third person.

## **12 Indemnity**

12.1 Subject to Clause 12.2 the Service Provider shall indemnify and keep indemnified the Council from and against any and all loss, damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Council resulting from a breach of this Contract by the Service Provider including but not limited to:

- (a) any act, neglect or default of the Service Provider or its Employees or agents; and
- (b) breaches in respect of any matter arising from the supply of the Services resulting in any successful claim by any third party.

12.2 Subject to Clause 12.3 the Service Provider's aggregate liability under this Contract (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) in respect of any loss of or damage to tangible property (which for the avoidance of doubt includes data) (whether belonging to the other Party or a third party) howsoever caused will be limited to £1,000,000 (£1m), which the Parties agree to be fair and reasonable in the circumstances.

12.3 Neither Party excludes or limits its liability (if any) to the other Party:

- (i) for breach of its obligations arising under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
- (ii) for personal injury or death resulting from its negligence;

(iii) for any matter for which it would be illegal for it to exclude or to attempt to exclude its liability; or for fraud.

12.4 The Council shall not be liable for any consequential losses including but not exclusively, loss of profit, earning, income, business, goodwill, savings opportunities, reputation or associated costs to the Service Provider howsoever caused.

### **13 Insurance**

13.1 The Service Provider shall maintain at its own cost and for a period of at least 6 years after the end of the Term policies of insurance to cover its liability in respect of any act or default for which it may become liable to indemnify the Council under the terms of this Contract in the following minimum sums:

- (a) Employers' liability of £5,000,000 (five million)
- (b) Public liability of £10,000,000 (ten million)
- (c) Professional indemnity of £2,000,000 (two million)

13.2 The Service Provider warrants and represents that it has the insurances required by Clause 13.1.

### **14 Conflict of Interest**

14.1 Upon becoming aware of any possible conflict of interest that may arise between the interest of the Council and any other of the Service Provider's clients, the Service Provider shall notify the Authorised Officer immediately and shall take all reasonable steps to remove or avoid the cause of any such conflict to the satisfaction of the Authorised Officer.

### **15 Monitoring of the Contract**

15.1 The Service Provider shall as soon as reasonably practicable provide the Authorised Officer with any information relating to the carrying out of the Services which the Authorised Officer may reasonably request.

### **16 Termination**

16.1 Unless otherwise agreed by the Parties or terminated pursuant to Clause 3.2 or any of the following provisions, the Contract shall expire at the end of the Term specified in Clause 3.1 of this Contract.

16.2 The Council may terminate the Contract with immediate effect if:

- (a) The Authorised Officer is of the reasonable opinion that the Service Provider has failed to perform the Services specified in the Contract or has failed to do so to the Contract Standard and that such failure is incapable of remedy.
- (b) The Service Provider has failed to remedy a failure to perform the Services or has failed to remedy a failure to provide the Service to the Contract Standard including the standard required by the Schedules or these conditions of Contract in the time required to remedy such failure as expressed in writing to the Service Provider.

- (c) the Services have not been provided at the time set out in these Conditions of Contract (including but not limited to Schedule 1), and the Authorised Officer reasonably considers either that time is of the essence or that the nature of the Services justifies termination without affording the Service Provider an opportunity to remedy its default.
- (d) The Service Provider or any employee of the Service Provider or any person acting on behalf of the Service Provider has:
  - I. given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972;
  - II. at any time during the tendering process (i.e. from the date of the publication of the notice seeking expressions of interest to the date of the award of the Contract), directly or indirectly canvassed any member or official of the Council concerning the acceptance of any proposal in respect of the Contract;
  - III. directly or indirectly obtained or attempted to obtain information from any member or official of the Council concerning any other proposal submitted by any other person in respect of the formation of the Contract;
  - IV. committed, or attempted to commit, or failed to prevent, any offence under, but not limited to, the Acts of Parliament listed in Clause 8.
- (e) The Service Provider compounds or arranges with his creditors whilst insolvent or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- (f) A mortgagor takes possession of the whole or a substantial part of the Service Provider's property or assets or an administrator is appointed to the same.
- (g) An order is made, or a resolution passed, for the winding up of the Service Provider.

16.3 The Service Provider may terminate the Contract if:

- (a) the Council is in breach of any of its obligations under clauses 6.1 and/or 6.2 but only after first giving the Council a reasonable opportunity to remedy its breach save that nothing in this provision shall relieve the Council of any obligation to pay interest; or
- (b) the Service Provider is professionally obligated to cease acting for the Council.

## 17 Termination consequences

17.1 In the event of the Contract being terminated for any of the reasons contained in Clause 16.2 above the Council will:

- (a) cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Service Provider's engagement shall have been calculated; and

- (b) be entitled to employ and pay other persons to provide and complete the provision of the Services or any part thereof; and
- (c) be entitled to deduct from any sum or sums that would but for this Clause 17 have been due from the Council to the Service Provider under this Contract or any other contract or agreement, or be entitled to recover the same from the Service Provider as a debt, together with any consequent loss or damage to the Council. Such loss or damage will include the reasonable costs to the Council of the time spent by its officers in terminating the Contract, and in making alternative arrangements for the provision of the Services or any part thereof.

17.2 The rights of the Council under this Clause 17 are in addition to and without prejudice to any other rights the Council may have against the Service Provider.

17.3 In the event that the Service Provider terminates the Contract under the provisions of Clause 16.3(a) it shall be entitled to recover its reasonable expenses from the Council of recovering its unpaid invoices.

17.4 In the event that the Service Provider terminates the Contract under the provisions of Clause 16.3(b) it shall provide the Council with reasonable assistance at its own cost in implementing an orderly transition to a new Service Provider.

17.5 The termination of the Contract, howsoever arising, will be without prejudice to any rights or obligations theretofore accrued or to any provisions which are expressed to be performed after or to survive the termination of this Contract.

#### **18 Delivery up of documents on termination**

18.1 Subject always to Clause 4.4, the Service Provider or his personal representative shall upon the termination of his engagement immediately deliver up to the Council all correspondence documents specification papers and property belonging to the Council which may be in his possession or under his control.

#### **19 Transfer of Undertakings (Protection of Employment) [TUPE]**

19.1 It is not anticipated that TUPE will apply at the expiry or termination of the Contract but if it does the Parties will comply with their respective obligations under the TUPE Regulations and will cooperate with each other in providing such information as the other Party reasonably desires or requires in determining whether and to what extent TUPE may apply and providing TUPE information (to the extent permissible in law) to third parties who may have an interest in receiving it.

#### **20 Force Majeure**

20.1 If either Party is unable to carry out their respective obligations under this Contract as a result of Force Majeure then that Party shall not be liable under this Contract for such failure provided the affected Party shall have given the other notice that such failure is the result of Force Majeure within 5 business days of such failure occurring.

20.2 If an event of Force Majeure occurs then the Council and the Service Provider shall meet to discuss how best to continue to provide the Services until the Force Majeure event ceases, which may include the Council providing the Service Provider with assistance, where reasonably practicable.

20.3 If in the reasonable opinion of either Party the Force Majeure event is unlikely to end within 2 months of the event arising that Party may terminate the Contract with immediate effect.

## **21 Not Used**

21.1 Not Used.

## **22 Variations**

22.1 Except for variations within the meaning of Clause 22.2 a variation to this Contract (including to the scope and nature of the Services) shall only be valid if it has been agreed in writing and signed by both Parties ('Variation').

22.2 The Council may require variations as outlined in Appendix A to the Instructions for Tendering, and such variations shall not be subject to the requirement for both Parties to sign.

22.3 The Service Provider shall not make a variation or supply services not specified without the written authority of the Authorised Officer.

## **23 Data Protection and Freedom of Information**

23.1 Throughout this Clause 23 the Council is referred to as Controller and the Service Provider is referred to as Processor. The Parties acknowledge that for the purposes of the Data Protection Legislation the Council is the Controller and the Service Provider is the Processor unless otherwise specified in **Schedule 5** or in any other part of the Contract or a Variation. The only processing that the Processor is authorised to do is listed in **Schedule 5** ('Schedule of Processing, Personal Data and Data Subjects') by the Controller and may not be determined by the Processor.

23.2 The Service Provider warrants that it will lawfully process in accordance with the Data Protection Legislation as detailed in Schedule 5.

23.3 The Council has a number of obligations under the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations (EIR) to provide information of its functions where a person has made a request, unless the FOIA or the EIR exempts the requested information from such provision. The Service Provider and his sub-contractors shall co-operate with the Council in respect of any request affecting or related to the provision of the Services by among other things providing written responses to requests as required by the Authorised Officer. The Service Provider warrants to use all reasonable endeavours to help the Council meet its obligations under the FOIA and the EIR.

23.4 The Council is obliged by the Local Government Transparency Code issued by the Secretary of State under the Local Government (Transparency Requirements) (England) Regulations 2014 to publish contracts (worth more than £5,000) in their entirety, subject to redaction of commercially sensitive information, confidential information, intellectual property and data protection. The Service Provider agrees that the Council may publish this Contract in its entirety and also publish performance data subject to the Council considering and properly applying those qualifications.

**24 Equal Opportunities**

24.1 The Service Provider shall use all reasonable endeavours to comply with all statutory provisions, statutory instruments, rules, regulations and bye-laws relating to equality and discrimination including, but not limited to, the Equality Act 2010 and shall take all reasonable steps to ensure that its Employees do not discriminate against any person because of any Protected Characteristic within the meaning of the Equality Act.

**25 Policy documents**

25.1 The Service Provider shall ensure that its Employees are fully conversant with and abide by all of the Council's policies which are relevant to the performance of the Services and which have been brought to its attention including but not limited to Lambeth's policy on whistleblowing.

**26 Not Used**

26.1 Not used.

**27 Complaints in Respect of Service Provision**

27.1 The Service Provider shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner and shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times. The Service Provider shall notify the Authorised Officer promptly in writing of all complaints received and of all steps taken or proposed to be taken in response thereto.

**28 Disputes**

28.1 Subject to Clause 28.3 if any dispute or difference arises out of this Contract the Parties shall meet and attempt to resolve all such disputes or differences. If within 30 days such disputes or differences cannot be resolved, then the Parties with the assistance of the Centre for Dispute Resolution seek to resolve the dispute or difference amicably by using an alternative dispute resolution ("ADR") procedure acceptable to both Parties.

28.2 If either Party fails or refuses to participate in the ADR procedure, or in the event the dispute or difference is not resolved to the satisfaction of both Parties within 30 days after it has arisen, the dispute or difference shall be referred to a sole arbiter appointed under the Rules of the Chartered Institute of Arbitrators.

28.3 Nothing in this Clause 28 (Disputes) shall operate to prevent either Party taking legal action in the courts should they consider that ADR will not adequately protect or vindicate their position.

**29 Committee Meetings and other Meetings**

29.1 The Service Provider shall, if requested (and only to the extent reasonable and proportionate), attend Council and committee meetings, meetings of the Executive, meetings with members of task forces and other meetings, including but not limited to Scrutiny Committees. If requested, the Service Provider shall supply written reports to whichever of those bodies as requests it. If the Service Provider is requested to attend any meeting then at such meeting the Service Provider shall answer truthfully and accurately, and produce all relevant material. Such answer shall be, at the election of the committee or other body mentioned in this Clause 29.1, answered either orally at the meeting or at in writing at such a time as may be directed.

**30 Local Authority Functions**

30.1 Nothing in this Contract shall prejudice or affect the Council's rights, powers, duties and obligations in relation to the exercise of its functions as a local authority.

**31 Waiver**

31.1 Failure by either Party to enforce or rely on at any time during or after the Term any one or more of the terms, conditions or warranties of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions or rely on any warranties given in this Contract, nor shall such failure create an estoppel.

**30 Supersedes Prior Agreements**

30.1 This Contract supersedes any prior contracts or agreements between the Parties to provide the Services, whether written or oral, and any such prior contracts or agreements are cancelled as at the Commencement Date but without prejudice to any rights that have already accrued to either of the Parties.

**33 Entire Contract**

33.1 Each Party acknowledges that this Contract, its Schedules and any amendments or Variations that may be agreed in writing by both Parties, contains the whole agreement between the Parties relating to the subject matter of the Contract.

**34 Notices**

34.1 Any notice or other communication requiring to be served under or in connection with the Contract shall be in writing and shall be delivered to the registered offices at the addresses stated in the Contract or as otherwise specified in the Contract.

34.2 Any such notice shall be delivered by hand or sent by recorded first class post and shall conclusively be deemed to have been given or received at the time of delivery. The Parties agree that they will simultaneously email any notice given under this Clause 34 to the other Party's Representative or Authorised Officer, as the case may be.

**35 Joint and Several**

35.1 Where the Services are being provided by a consortium each and every member of the consortium shall be jointly and severally liable under this Contract.

**36 Assignment and Sub-Contracting**

36.1 The Council shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Service Provider.

36.2 The Service Provider shall not:

- (a) without the written consent of the Authorised Officer, in his absolute discretion and subject to any terms as he may consider desirable assign the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof;
- (b) sub-contract the provision of the Services or any part thereof to any person without the prior written consent of the Authorised Officer. Such consent shall be at the discretion of the Authorised Officer and, if given, shall not relieve the Service Provider from any liability or obligation under the Contract. The Service Provider shall be responsible for the acts, defaults or neglect of any sub-contractor, its employees or agents in all respect as if they were the acts, defaults or neglect of the Service Provider.

**37 Third Parties**

37.1 Neither Party intends to confer any right or benefit upon a third party and for the avoidance of doubt, the provisions of the Contract (Rights of Third Parties) Act 1999 are expressly excluded from this Contract.

**38 Governing Law**

38.1 This Contract shall be governed by English law.

Signed for and on behalf of the Parties on the next page.



<p><b>Signed for and on behalf of the Council (1)</b></p> <p>Name:</p> <p>Position:</p> <p>Signature:</p>	<p><b>Signed for and on behalf of the Service Provider</b></p> <p>Director Name:</p> <p>Position:</p> <p>Signature:</p>
<p><b>Signed for and on behalf of the Council (2)</b></p> <p>Name:</p> <p>Position:</p> <p>Signature:</p>	<p><b>Service Provider Director's signature witnessed by:</b></p> <p>Name:</p> <p>Signature:</p>

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## **SCHEDULE 1**

### **SERVICE SPECIFICATION**

The Service Provider shall perform the services and deliver up the deliverables in accordance with the following documents:

- Request for Quotation with Service Specification, Instructions For Quotation and Background Information issued on [date]
- Service Provider's quote dated [date] including method statement.

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## **SCHEDULE 2**

### **SPECIAL CONDITIONS – RESPONSIBLE PROCUREMENT**

#### **A1 Pay and Decent working conditions**

- A1.1 The Service Provider shall pay all directly employed staff at least the Living Wage (as accredited with the Living Wage Foundation).
- A1.2 The Service Provider shall commit to and demonstrate that its directly employed staff are free to join a trade union and are not unfairly treated for belonging to one.

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**SCHEDULE 3**

**CONTACT DETAILS**

**The Service Provider's Representative:**

For general queries in the absence of the named officer:

**The Council's Authorised Officer shall be:**

**For general queries in absence of the named Authorised Officer.**

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## SCHEDULE 4

### PRICING DOCUMENT AND PAYMENT TERMS

#### PRICING

£x per annum payable [monthly/quarterly/in advance].

#### PAYMENT TERMS

1. The Council operates an electronic only policy for issuing Purchase Orders and receiving invoices from Service Providers and contractors through an internet portal managed in partnership with the Council by a third-party provider.
2. The electronic portal is offered free of charge to Service Providers and contractors. The Council will direct the third-party partner to make contact with the Service Provider in order to create an account within the electronic portal to enable them to invoice the Council.
3. The Service Provider will be able to view its Purchase Orders and the status of its invoices within the electronic portal in real time.
4. Both the Council and the Service Provider shall adhere to the following procedure in respect of invoicing and payments in respect of the Services:
  - (a) The Service Provider shall submit to the Council each month (or as otherwise agreed by the Parties in writing) an invoice, by electronic means through the portal only setting out the sums for each type of work together with a record detailing the work carried out, in accordance with the prices tendered and;
  - (b) Once the Council agrees the details of the electronic invoice and the work record it will arrange payment, which will be made within 30 days of invoice date unless disputed by the Council.
  - (c) Where the Council disputes the amounts entered on an invoice the parties shall discuss the differences and the Service Provider shall submit such further information as required by the Council to verify the invoice sum.
  - (d) Once agreed, the Service Provider shall submit a corrected Invoice as agreed pursuant to Clause 4(a), above.
5. Invoices submitted via the internet portal shall be deemed to have been received on the next working day from the date of transmission.
6. Invoices submitted by any other means shall be deemed to have been received only once those invoices reach the appropriate payment officer within the Council.

## **SCHEDULE 5**

### **SCHEDULE OF DATA PROTECTION AND DATA PROCESSING**

#### **PART 1: Generic Standard GDPR Clauses**

##### **STANDARD DEFINITIONS**

Party: a party to this Agreement;

Agreement: the 'Contract' to which this Schedule 5 is appended;

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;

Processor Personnel: means all directors, officers, employees, agents, consultants and Service Providers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

##### **GDPR CLAUSE DEFINITIONS**

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR;

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

DPA 2018: Data Protection Act 2018;

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679);

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing;

LED: Law Enforcement Directive (Directive (EU) 2016/680);

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in the Schedule appended to the Agreement (if any) prescribing security measures;

Sub-processor: any third party appointed to process Personal Data on behalf of that Processor related to this Agreement

## **B DATA PROTECTION**

B1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Service Provider is the Processor unless otherwise specified in Part 2 of this Schedule 5 or in any other part of the Agreement or any Variation. The only processing that the Processor is authorised to do is listed in Part 2 of this Schedule 5 by the Controller and may not be determined by the Processor.

B1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

B1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

B1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Part 2 of this Schedule 5, unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;

- (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that:
- (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Part 2 of this Schedule 5);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
- (d) are aware of and comply with the Processor's duties under this clause;
- (e) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
- (f) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
- (g) have undergone adequate training in the use, care, protection and handling of Personal Data; and not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (h) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

B1.5 Subject to clause B1.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;



- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- B1.6 The Processor's obligation to notify under clause B1.5 shall include the provision of further information to the Controller in phases, as details become available.
- B1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause B1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- B1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 5. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
  - (d) If the Processor employs fewer than 250 staff and considers that it should be exempted from the requirements of this clause B8.1 it shall so notify the Controller, and the Controller shall determine whether the Processor should be exempted and direct the Processor accordingly.

- B1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- B1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- B1.11 Before allowing any sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the sub-processor which give effect to the terms set out in this Schedule 5 such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the sub-processor as the Controller may reasonably require.
- B1.12 The Processor shall remain fully liable for all acts or omissions of any of its sub-processors.
- B1.13 The Controller may, at any time on not less than 14 days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- B1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- B1.15 Where the Parties include two or more Joint Controllers as identified in Part 2 (if so identified) in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement in replacement of Clauses B1.1- B1.14 for the Personal Data under Joint Control.

## PART 2: SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

**Commented [DT(1):** To be completed in consultation with the provider in contract discussions.

This Part 2 of Schedule 5 shall be completed by the Controller, who may take account of the view of the Processors; however, the final decision as to the content of this Part 2 of Schedule 5 shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: Matt Ginn, Information Governance Manager at: [infogov@lambeth.gov.uk](mailto:infogov@lambeth.gov.uk), or any replacement or substitute Data Protection Officer at the relevant time and who should in the first instance be contacted at [infogov@lambeth.gov.uk](mailto:infogov@lambeth.gov.uk).
2. The contact details of the Processor's Data Protection Officer are: **[insert Contact details]**.
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule 5.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Service Provider is the Processor in accordance with Clause 23.1.
Subject matter of the processing	The service is for a tenancy sustainment service for Lambeth Council tenants.
Duration of the processing	The Contract Term as defined in Clause 3.1 of the Contract and including any extension thereof.
Nature and purposes of the processing	
Type of Personal Data being Processed	The Personal Data set may contain, but is not limited to, the following types of Personal Data:

Categories of Data Subject	
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	<p>The Personal Data will be retained for the duration of the Contract Term but in some cases it may be possible to return or destroy Personal Data on a particular case earlier than that. On the expiry of the Contract, the Processor shall return all Personal Data to the Controller where feasible. In cases where it is not feasible or where the Processor has paper records then the Processor shall securely destroy the Personal Data once it has established that the Controller has its own records of the Personal Data. Any Personal Data generated by the Processor that has not already been shared with the Controller shall be sent securely, and any copies retained by the Processor destroyed.</p>

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