

## **APPENDIX 5**

### **EXETER CITY COUNCIL TERMS AND CONDITIONS**

#### **AIR QUALITY CONTINUOUS ANALYSERS 2017.**

### **SCHEDULE - KEY PROVISIONS**

#### **1.1 THE SUPPLIER**

#### **1.2 THE SERVICES**

To supply and install continuous ambient air quality monitoring equipment, communications and ancillary equipment at the Royal Albert Memorial Museum, Queen Street and at Alphington Street, Exeter in accordance with the specification described in Appendix 6 to the tender pack. To provide service and maintenance services as set out in the Service Level Agreement contained in appendix 6 to the tender pack.

#### **1.3 THE CONTRACT PRICE**

The contract price to be broken down separately between Supply and Installation and then the subsequent Maintenance and Servicing. A 50% weighting will be applied to both pricing elements in the evaluation process.

a). Price for the Supply and Installation works.

£

b). Price for the subsequent 3 year maintenance & Servicing.

£

Total all in tender price.

£

#### **1.4 THE CONTRACT TERM**

Commencement date tba (subject to contract award) and with completion of installation works within 8 weeks of the agreed commencement date.

Servicing and maintenance contract term to be 3 years from signing off of completed installation work.

#### **1.5 THE FACILITY**

The internal and external air monitoring equipment at Royal Albert Memorial Museum, Exeter and the air monitoring equipment cabinet on Alphington Street, Exeter.

Software to Exeter City Council IT provider (STRATA).

## **1.6 INSURANCE**

- 1.6.1 *Employer's liability insurance with a limit of indemnity of not less than £5,000,000.00 per claim; and*
- 1.6.2 *Public Liability insurance with a limit of indemnity of not less than £5,000,000.00 per claim; and*
- 1.6.3 *Professional Indemnity Insurance with a limit of indemnity of not less than £2,000,000.00 per claim.*

## **1.7 THE CONTRACT DOCUMENTS**

SQ and SQ Guidance Notes.

STQ and STQ Guidance Notes

Specification for Supply, Installation and Commissioning.

Specification and Service Level Agreement for ongoing Maintenance and Servicing.

Exeter City Council Terms and Conditions Air Quality Continuous Analysers 2017.

*(NOTE: Here you should list all documents which are specific to this contract and which should be incorporated into it).*

## **1.8 THE SPECIAL CONDITIONS**

N/A

*(NOTE: Add any additional contractual conditions that are not contained within these standard terms and conditions. For Example: Service Performance, Liquidated Damages and Change Control. Please take legal advice in respect of any special conditions).*

**THIS AGREEMENT** is made on the                      day of

**BETWEEN:-**

- (1) **EXETER CITY COUNCIL** of Civic Centre, Paris Street, Exeter, Devon, EX1 1JN (“the Council”) of the one part; and
- (2) **THE SUPPLIER** whose name, registered office or principal place of business, and fax number are as stated in the Schedule (“the Supplier”) of the second part;

**IT IS HEREBY AGREED AS FOLLOWS:-**

**1. INTERPRETATION**

**1.1 Definitions.**

**Commencement Date:** has the meaning set out in paragraph 1.4 of the Schedule.

**Confidential Information:** all information of a confidential nature disclosed or made available directly or indirectly to the Supplier or its Representatives, including any information which is marked confidential or private and any information relating to the Council’s members, customers, clients, suppliers, business strategy, plans, intentions, market opportunities, operations, processes or intellectual property.

**Contract:** means this contract and includes the Schedule and all Contract Documents.

**Contract Documents:** means the documents listed in paragraph 1.7 of the Schedule.

**Contract Price:** means the price and associated details in paragraph 1.3 of the Schedule.

**Contract Term:** means the term set out in paragraph 1.4 of the Schedule.

**Council Data:** means all information and data including Personal Data processed stored transmitted or generated by the Supplier on behalf of the Council.

**Council Materials:** has the meaning set out in clause 3.3 (i)

**Council’s Acceptance:** means either the signing of this Contract or the issue by the Council of a Letter of Intent.

**DPA:** means the Data Protection Act 1998 and related guidance or codes of practice issued by the Information Commissioner.

**Deliverables:** all products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Facility:** (if applicable) means the location or locations in paragraph 1.5 of the Schedule including any part or parts of Council owned premises.

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

**FOIA:** means the Freedom of Information Act 2000.

**Insurances:** means the insurances set out in paragraph 1.6 of the Schedule.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Personal Data:** shall mean any personal data as defined in the DPA processed by the Supplier on behalf of the Council.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, the Freedom of Information Act 2000 or the Environmental Information Regulations.

**Representatives:** employees officers, agents, advisors, sub-contractors, suppliers or any other representatives of the Supplier.

**Schedule:** means the Schedule of this Contract as attached hereto.

**Services:** means the matters set out in paragraph 1.2 of the Schedule; including without limitation any Deliverables, to be provided by the Supplier under this Contract.

**Working Day:** means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

1.2 The following rules of interpretation apply:

a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

a references to a party includes its personal representatives, successors or permitted assigns;

a reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them;

a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

a reference to **writing** or **written** includes e-mails but does not include faxes;

any consent required from the Council under the Contract must be obtained in writing from an authorised officer of the Council.

## **2. BASIS OF CONTRACT**

- 2.1 The Supplier has agreed to provide the Services to the Council in return for the Contract Price subject to the terms of this Contract.
- 2.2 This Contract shall come into existence and take effect upon Council's Acceptance and shall continue for the Contract Term until such time as it is terminated in accordance with this Contract.

## **3. SUPPLY OF SERVICES**

- 3.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to the Council in accordance with the terms of this Contract.
- 3.2 The Supplier shall meet any performance dates for the Services specified in the Schedule or notified to the Supplier by the Council.
- 3.3 In providing the Services, the Supplier shall:
- (a) co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
  - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
  - (d) ensure that the Services and the Deliverables shall conform with all descriptions and specifications set out in the Schedule, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Council;
  - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - (f) use the best quality goods, materials, standards and techniques and ensure that the Deliverables, and all goods and materials supplied and

used in the Services or transferred to the Council, will be free from defects in workmanship, installation and design;

- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any part of the Facility and notify the Council immediately of any breach;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier ('Council Materials') in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation;
- (j) not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission upon which it relies for the purposes of carrying out its duties and functions, and the Supplier acknowledges that the Council may rely or act on the Services; and
- (k) comply with all of the Council's policies and procedure signs notices and other instructions either displayed at the Facility or notified to the Supplier (or its Representatives) from time to time and relating to the use of the Facility or any part of them or any equipment or facilities at the Facility and ensure that its Representatives also comply with this clause.

#### **4. SUPPLIERS PERSONNEL & CONDUCT**

##### **4.1 The Council reserves the right:**

- (a) to refuse to admit any Representative into the Facility whose admission is in the reasonable opinion of the Council undesirable.
- (b) to request a replacement Representative for a Representative who in the reasonable opinion of the Council is undesirable or not suitably qualified or experienced to perform the Services.

##### **4.2 The Supplier shall:**

- (a) ensure that a Representative fulfilling a specific role in performing the Services will do so unless otherwise agreed with the Council.



- (b) take all reasonable steps to prevent unauthorised persons entering the Facility.
- (c) promptly provide the Council with a detailed list of Representatives taking part in the Services specifying the capacities in which they are connected with the Services and any other details the Council may reasonably require.
- (d) arrange the Services so as to minimise any inconvenience or interference to the duties and functions of the Council.

## **5. COUNCILS REMEDIES**

5.1 If the Supplier fails to perform the Services in accordance with this Contract, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Deliverables which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by the Council in obtaining any substitute service from a third party;
- (d) where the Council has paid in advance for Services that have not been provided by the Supplier to have such sums refunded by the Supplier;
- (e) to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to provide the Services in accordance with this Contract.

5.2 The terms of this Contract shall extend to any substituted or remedial services supplied by the Supplier.

5.3 The Council's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

## **6. COUNCIL'S OBLIGATIONS**

### **6.1 The Council shall:**

- (a) provide the Supplier with reasonable access at reasonable times to the Facility for the purpose of providing the Services and delivering Deliverables; and
- (b) provide such information as the Supplier may reasonably request (in a format determined by the Council acting reasonably) for the provision of the Services and the Council considers reasonably necessary for the purpose of providing the Services.

## **7. CHARGES AND PAYMENT AND INVOICES**

- 7.1 The Contract Price shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Council, the Contract Price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 7.2 In consideration of the supply of Services by the Supplier, the Council shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 7.3 All amounts payable by the Council under this Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under this Contract by the Supplier to the Council, the Council shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of Services at the same time as payment is due for the supply of the Services.
- 7.4 Invoices shall be in a form approved by the Council and any invoices that have to be resubmitted due to the inaccuracy will become due 30 days from the date the resubmitted invoice is issued.

- 7.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Council to inspect such records at all reasonable times on request.
- 7.6 The Council may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Council to the Supplier under this Contract.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 In respect of the Services and any goods that are transferred to the Council as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Council, it will have full and unrestricted rights to sell and transfer all such items to the Council.
- 8.2 The Supplier assigns to the Council, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 8.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 8.4 The Supplier shall, promptly at the Council's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Council may from time to time require for the purpose of securing for the Council the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Council in accordance with clause 8.2.
- 8.5 All Council Materials are the exclusive property of the Council.

## **9. INDEMNITY & INSURANCE**

9.1 The Supplier shall keep the Council indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Council as a result of or in connection with:

- (a) any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with, the Services;
- (b) any claim made against the Council by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier and its Representatives;
- (c) any claim made against the Council in connection with the negligence of the Supplier or its Representatives whilst on, entering or leaving the Facility or any damage to Councils property or the Facility;
- (d) any claim made against the Council for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Deliverables and/or the use or supply of the Services;
- (e) any breach of the DPA arising out of any unauthorised and unlawful processing, accidental loss or destruction of, or damage or theft to Council Data: and arising out of any action or inaction of the Supplier resulting in the Council being in breach of any of its obligations or duties under the DPA or equivalent applicable legislation in any other country. For the avoidance of doubt this indemnity includes any penalty or fine imposed by the Information Commissioners Office on the Council where the breach of the DPA or the loss of Council Data is the caused by the negligence of the Supplier.

9.2 The Supplier shall not be liable to the Council for any losses, damage or injury to the extent that they are caused directly or arise directly out of the act or omissions of the Council in breach of its obligations under this Contract.

- 9.3 Without prejudice to its liability to indemnify the Council, the Supplier shall maintain in force the Insurances with reputable insurers lawfully carrying on such insurance business in the United Kingdom during the term of this Contract and for a period of six years thereafter and in the case of Professional Indemnity Insurance twelve years.
- 9.4 The Supplier shall produce such evidence of insurance as the Council may reasonably require in relation to the insurances demanded as detailed above. Such evidence shall show that the insurances referred to and required by the Contract have been taken out, paid for and shall remain in force at all material times throughout the duration of the Contract, and as required thereafter. In this regard the Supplier shall furnish the Council with details of each renewal of insurance as and when its renewal is made throughout the duration of the contract and (if so required by the Council) thereafter.

## **10. LIABILITY**

- 10.1 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
- 10.2 Subject to clause 10.4 the Council's total liability shall be limited to the Contract Price due for the Services.
- 10.3 Subject to clause 10.4, the Council shall not have any liability for any:
- (a) indirect or consequential loss or damage;
  - (b) loss of business, rent profit or anticipated savings whether direct or indirect unless it has expressly assumed such liability;
  - (c) damage to goodwill or reputation;
  - (d) loss, theft, damage or destruction to any equipment, tools, machinery, vehicles or other equipment brought onto the Facility by the Supplier or its Representatives;
  - (e) loss, damage, costs or expenses suffered or incurred by any third party.

10.4 Notwithstanding any other provision of this Contract the Council does not limit or exclude its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence;
- (c) any other act or omission, liability for which may not be limited under any applicable law.

## **11. CONFIDENTIALITY**

11.1 Subject to clause 11.2 the Supplier shall not acquire any rights of ownership or use in any Confidential Information originating or provided by the Council.

11.2 The Supplier undertakes:

- (a) To restrict the disclosure of Confidential Information to such of its Representatives as need to know it for the purpose of discharging the Supplier's obligations under this Contract , and shall ensure that all such Representatives are subject to obligations of confidentiality corresponding to those set out in this clause 11.
- (b) That the Supplier and its Representatives shall use the Confidential Information only for the purposes of performing their respective obligations under this Contract.
- (c) That any person employed or engaged by the Supplier in connection with this Contract shall not, in the course of such employment or engagement, disclose any Confidential Information to any third party without the prior written consent of the Council.
- (d) To take all necessary precautions to ensure that all Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than as permitted by this clause 11.
- (e) That, without prejudice to the generality of the foregoing, neither the Supplier nor any of its Representatives shall use the Confidential Information for the solicitation of business from the other or from any third party.

11.3 The provisions of this clause 11 shall not apply to any information which:

- (a) Is or becomes public other than by breach of this clause 11; or
- (b) Is in the possession of the Supplier without restriction on disclosure before the date of receipt from the disclosing person; or
- (c) Is independently developed by the Supplier without access to the Confidential Information; or
- (d) Must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure including any requirements for disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004

## **12. AUDIT**

12.1 The Supplier shall keep and maintain until six years after this Contract has come to an end, or such longer period as specified by the Council (in writing) all Information relating to the Contract and full and accurate records of the following:

- (a) the Services provided under the Contract; and
- (b) the monies paid by the Council; and
- (c) any other information requested by the Council.

## **13. DATA SECURITY & CONTROL**

13.1 The Supplier shall;

- (a) only process Council Data in accordance with strict instructions from the Council in order to perform its obligations under this Contract.
- (b) at all times have in place and maintain appropriate technical and organisational security measures to safeguard against unauthorised and unlawful processing, accidental loss or destruction of, or damage or theft to Council Data as required under the Seventh Data Protection Principle in Schedule 1 to the DPA.
- (c) ensure all Council Data is processed in a secure manner, including using encryption application where appropriate.
- (d) immediately notify the Council of any breach of the security measures required to be put in place pursuant to clause 13.1.(b).

13.2 In a manner that conforms to any time scales set out in the DPA (and in any event as soon as reasonably practicable if sooner), the

Supplier shall at the Supplier's cost, comply with any request by the Council to:

- (a) correct or delete inaccurate Council Data;
- (b) provide a copy of the Council Data stored in any form of retrieval or storage facilities in the possession or control of the Supplier;
- (c) provide information about the processing of the Council Data;
- (d) assist in respect of any request or notice or any anticipated request or notice, by or on behalf of any data subject as defined in the DPA in respect of the Council Data;
- (e) otherwise provide reasonable assistance to the Council as necessary to allow the Council to comply with the DPA.
- (f) destroy or return all Council Data to the Council in a format requested by the Council.

13.3 The Supplier shall not without the Council's prior consent;

- (a) use the Council Data for the Suppliers own purposes, including for marketing;
- (b) transfer or disclose any Council Data to third parties;
- (c) alter, delete, add to or otherwise interfere with the Council Data (save where expressly required to do so by the terms of this Contract).

13.4 The Supplier shall not, without the Council's prior consent, which may be withheld in its absolute discretion, transfer any Council Data outside of England and Wales; and if the Council authorises a transfer to a country outside the England and Wales or authorises any access to the Council Data from outside England and Wales, the parties shall enter into the EU Model Clauses before any such transfer or access takes place, and in the event the Council consents to a transfer of Council Data to a sub-contractor the Supplier shall procure that the terms of the EU Model Clauses are imposed on such a sub-contractor by requiring such sub-contractor to sign up to the terms of the EU Model Clauses before such transfer or access takes place.



#### **14. ANTI-BRIBERY**

14.1 The Supplier shall:

- (a) Comply with all applicable laws statutes regulations and Council policies relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ('Relevant Requirements');
- (b) Not engage in any activity practise or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity practise or conduct had been carried out in the UK;
- (c) Comply with the Council's policies on anti-bribery as the Council may update the Supplier from time to time ('Relevant Policies');
- (d) Have and shall maintain in place throughout the term of this Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 14.1(b) and will enforce them where appropriate;
- (e) Promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Contract;
- (f) Immediately notify the Council if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier, and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Contract.

14.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in clause 14.1 ('the Relevant Terms'). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Council for any breach by such persons of any of the Relevant Terms.

## **15. TERMINATION**

15.1 Without limiting its other rights or remedies, the Council may terminate this Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of this Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
- (b) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (e) the Supplier (being an individual) is the subject of a bankruptcy petition order;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (h) a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

- (j) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1(b) to clause 15.1(i) (inclusive);
- (k) the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business;
- (l) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

15.2 Without limiting its other rights or remedies, the Council may terminate this Contract with immediate effect by giving written notice to the Supplier and recover from the Supplier the amount of any loss resulting from such termination, if:

- (a) the Supplier shall have offered, or given or agreed to give, to any person employed by, or in the service of, the any gift, consideration or reward of any kind as an inducement for doing, or promising to do or for having done or promising to do, any action in relation to the obtaining or the execution of this Contract or any other Contract with the Council, or for showing or promising to show favour or disfavour to any person, in relation to this Contract or any other contract with the Council, or if the like acts shall have been done by it, or person employed by it or acting on its behalf (whether with or without the Supplier's knowledge) or if in relation to any contract with the Council the Supplier or any person employed by it or acting on its behalf shall have committed an offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972.
- (b) the Supplier or any person on its behalf is found to have canvassed prior to the submission of a tender or quotation.

15.3 Without limiting its other rights or remedies, the Council may terminate this Contract at any time by giving the Supplier one months' written notice.

## **16. CONSEQUENCES OF TERMINATION**

On termination of the Contract or any part of it for any reason:

- (a) where the Services are terminated, the Supplier shall immediately deliver to the Council all Deliverables, whether or not then complete, and return all Council Materials. If the Supplier fails to do so, then the Council may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (b) notwithstanding the obligations under clause 12 the Supplier shall procure that all Council Data shall be delivered to the Council forthwith and the Supplier shall certify full compliance with this clause;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- (d) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this contract including but not limited to 9,11,12,14 and 17 shall remain in full force and effect.

## **17. PUBLICITY**

- 17.1 The Supplier shall not make any press announcements or publicise the existence or terms of the Contract or use the Councils name or brand in any promotion or marketing or announcement of orders without the Councils prior written consent and shall ensure these provisions are observed by its Representatives;
- 17.2 The Council shall be entitled to publicise this Contract for any reason without notice.

## **18. DISPUTE RESOLUTION**

- 18.1 Where there is a dispute, the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A senior representative of each of the parties shall meet in person or communicate by telephone within 5 Working Days of the date of the written notification in order to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties. If the dispute cannot be resolved, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its remedies as provided below.
- 18.2 If the parties cannot resolve the dispute by the procedure set out above, the parties shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising out of this Contract.

## **19. EQUALITIES AND DIVERSITY**

### **19.1 The Supplier shall:**

(a) perform its obligations under this Contract (including those in relation to the Services) in accordance with:

(i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law;

(b) take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

(c) take all reasonable steps to secure the observance of this clause by all Representatives of the Supplier and all suppliers and sub-contractors employed in performance of the Contract.

## **20. HUMAN RIGHTS**

20.1 Insofar as it the Human Rights Act applies the Supplier shall (and shall use reasonable endeavours to ensure that its Representatives shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract.

20.2 The Supplier shall undertake or refrain from undertaking such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

## **21. FREEDOM OF INFORMATION**

21.1 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with these information disclosure requirements.

21.2 The Supplier shall and shall procure that its Representatives shall:

- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information;
- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

21.3 The Council shall be responsible for determining at its absolute discretion whether the Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
- (b) is to be disclosed in response to a Request for Information.

21.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.

21.5 The Supplier acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

- (a) without consulting with the Supplier; or
- (b) following consultation with the Supplier and having taken its views into account,

provided always that where clause 21.5(b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier 's attention after any such disclosure.

21.6 The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

21.7 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 21.5.

## **22. HEALTH AND SAFETY**

- 22.1 The Supplier shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the Contract. The Council shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Facility and that may affect the Supplier in the performance of the Contract.
- 22.2 While on the Facility, the Supplier shall comply with any health and safety measures implemented by the Council in respect of staff and other persons working on the Facility.
- 22.3 The Supplier shall notify the Council immediately in the event of any incident occurring in the performance of the Contract on the Facility where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 22.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Facility in the performance of the Contract.
- 22.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.
- 22.6 The Supplier shall comply with the Council's Health and Safety Policy in operation from time to time and available on request.

## **23. SUSTAINABILITY**

Unless the Council specifies otherwise the Supplier in providing the Services shall wherever practicable by design or supply to conserve energy, reduce waste, use durable and upgradeable goods, use more sustainable products (i.e. those that minimise environmental, social and economic impacts) and influence their suppliers to develop same and contribute to the establishment of better sustainable supply chains.

## **24. BEST VALUE**



The Supplier shall use reasonable endeavours to ensure that the provision of the Services complies with the Council's statutory duty to provide best value and must make arrangements to secure continuous improvement in the way in which the Services are exercised, having regard to a combination of economy, efficiency and effectiveness.

## **25. GENERAL**

25.1 **Force majeure:** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Services for more than two weeks, the Council shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

### **25.2 Assignment, novation and subcontracting:**

- (a) The Supplier shall not, except where Clause 25.2 (b) of this Contract applies, assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Council such consent not to be unreasonably withheld or delayed. If the Supplier subcontracts any of its obligations under this Contract, every act or omission of the subcontractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Council as if such act or omission had been committed or omitted by the Supplier itself.
- (b) Notwithstanding Clause 25.2 (a) of this Contract, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 25.2 (b) of this Contract shall be subject to:
  - (i) the deduction of any sums in respect of which the Council exercises its right of recovery under Clause 7.6 of this Contract;
  - (ii) all related rights of the Council in relation to the recovery of sums due but unpaid;
  - (iii) the Council receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Council shall make payment;

- (iv) the provisions of Clause 7 of this Contract continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Council;
  - (v) payment to the Assignee being full and complete satisfaction of the Council's obligation to pay the relevant sums in accordance with this Contract.
- (c) Any authority given by the Council for the Supplier to subcontract any of its obligations under this Contract shall not impose any duty on the Council to enquire as to the competency of any authorised subcontractor. The Supplier shall ensure that any authorised subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with this Contract.
- (d) Where the Supplier enters into a subcontract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such subcontract, unless otherwise agreed with the Council in writing, which:
  - (i) contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such subcontracting;
  - (ii) contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with law and guidance and record keeping;

- (iii) contain a prohibition on the subcontractor subcontracting, assigning or novating any of its rights or obligations under such subcontract without the prior written approval of the Council (such approval not to be unreasonably withheld or delayed);
  - (iv) contain a right for the Council to take an assignment or novation of the subcontract (or part of it) upon expiry or earlier termination of this Contract;
- (e) The Council shall upon written request have the right to review any subcontract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any subcontract within five (5) Working Days of the date of a written request from the Council. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of subcontracts.
- (f) Where the Supplier enters into a subcontract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such subcontract, unless otherwise agreed with the Council in writing, which require payment to be made of all sums due to the subcontractor from the Supplier within a specified period not exceeding thirty (30) days from receipt by the Supplier of a valid invoice.
- (g) Where the Council pays the Supplier's undisputed invoices earlier than thirty (30) days from receipt in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant subcontractors within a comparable timeframe from receipt by the Supplier of such undisputed invoices from its subcontractors.
- (h) The Council may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

**25.3 Transfer of Services:**

- (a) Where the Council intends to continue to procure services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement supplier, the Supplier shall use all reasonable endeavours to ensure the seamless transition of the Services to the Council or a replacement supplier and to ensure that the transition is effected with the minimum of disruption to the Council.
- (b) The Supplier shall co-operate fully during the transition period and provide full access to all written and electronic information, data, documents, manuals working instructions, and reports which the Council (acting reasonably) considers necessary.

**25.4 Notices:**

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Working Day after transmission.
- (c) This clause 26.4 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

**25.5 Waiver and cumulative remedies:**

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

25.6 **Severance:**

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

25.7 **Status:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party being the agent or employee of another party for any purpose. No party shall have authority to act as an employee or as agent for, or to bind, the other party in any way.

25.8 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

25.9 **Variation:** Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the parties. For the avoidance of doubt in writing for the purpose of this clause does not include faxes or e-mails.

25.10 **Governing law and jurisdiction:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

25.11 **Entire agreement:** This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

As Witness the hands of the Parties or their duly authorised representatives

Signed by the **Council**

Name in Capitals

Position

Signed by Witness

Full Name

Address

Signed by the **Supplier**

Name in Capitals

Position

Signed by Witness

Full Name

Address