

Town Vitality Fund Tender Process
for
Launceston Safer Greener Streets Project



Funding Source

Town Vitality Funding from the Town Centre Revitalisation Fund

Accountable Body

Launceston Town Council

Launceston Town Council is acting as the Accountable Body for the **Launceston Town Planning Group**

Constituent LTPG Members include:

Cornwall Council, Launceston Town Council, Launceston Chamber of Commerce, The Orchard Centre (Third Sector) Launceston Life (Launceston Life is a trading name of Launceston (Cornwall) CIC, Resonance Ltd (no. 04418625)

Abbreviations:

Cornwall Council:	CC
Launceston Town Council:	LTC
Launceston Town Planning Group:	LTPG
Responsible Finance Officer:	RFO
Request For Quotation:	RFQ

Request for Quotation

OUTPUT 1: Town Centre Feasibility Study and Active Travel Assessment

OUTPUT 2: Town Centre Health Check

Project Title

SAFER GREENER STREETS -
Launceston Town Centre - Connected, Sustainable and Thriving project

Cornwall Council Ref - Launceston/TVF/GOL08

Issue Date: Monday 14 March 2022

Closing Date: (Noon Monday ~~11 April 2022~~ 25 April 2022)

Project Value: £99,000 (Ex VAT)

Launceston Town Council
Western Road
Launceston
Cornwall
PL15 7AR
[Tel: 01566 773693]
[E-mail RFO: helen@launceston-tc.gov.uk]

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Note to tenderer - All pages, as issued must be returned within your Quotation submission. Please do not remove any pages from this quotation document as all pages, method statements, supporting documents and appendices will form the final contract.

1 - PREAMBLE

name and ref)

GENERAL REQUIREMENTS

Quotations are invited to provide:

OUTPUT 1: Town Centre Feasibility Study and Active Travel Assessment

OUTPUT 2: Town Centre Health Check

The Council's detailed requirements are defined in the Specification.

BACKGROUND TO THE BUSINESS REQUIREMENT

Following a successful bid to CC's Town Vitality Funding from the Town Centre Revitalisation Fund, support was offered to Launceston Town Council, as the recipient to provide:

"SAFER GREENER STREETS - Launceston Town Centre - Connected, Sustainable and Thriving project. This supports Cornwall Council's ambition to show that town development proposals can stimulate town centre activity and put Cornish towns at the forefront of future government funding programmes. Towns with functioning Town Teams or Place Shaping Partnerships, with a strategy and plan for town centre investment will lead the path for town renewal and vitality. This work is intended to take forward development work to advance plans that will improve the economic, social and environmental revitalisation of their Town Centres."

SUBMISSION OF QUOTATION

Quotations should be received **by post** no later than **Noon Monday 11 25 April 2022**, with any queries, submitted via email to helen@launceston-tc.gov.uk Please leave sufficient time to allow the council to respond before the tender return date, but no later than Monday 28 March 2022.

Quotations should be sent to:

Mr Christopher Drake	01566 773693
Town Clerk	chris@launceston-tc.gov.uk
Launceston Town Council Western Road Launceston Cornwall PL15 7AR	

In addition to two paper copies of the tender documentation, you should include an electronic version (Memory Stick), based in Microsoft Word or Excel, within your tender return envelope.
Addressed as below or use the label we include with the documents.

<div>stamp</div> <p>(Tender for Safer Greener Streets – Launceston Town Centre)</p> <p>Mr Christopher Drake – Town Clerk Launceston Town Council Western Road Launceston Cornwall PL15 7AR</p>
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The tenderer's attention is specifically drawn to the date and time for receipt of tenders and no submission received after the closing date will be considered

When returning the tender please ensure that:

The envelope bears no name or mark indicating the identity of the tenderer. This includes for example franked mail, Post Office labels, courier labels or a signature across the seal of the envelope.

You may seek clarification on any of the points contained in the tender documents, by contacting the named person via e-mail email to helen@launceston-tc.gov.uk

Please leave sufficient time to allow the council to respond before the tender return date, but no later than Monday 28 March 2022.

When returning your quotation please ensure that:

- all documentation is properly completed and enclosed with your quotation.
- the deadline by which the quotation must be returned is complied with.

No quotation will be considered which is late - for whatever reason.

All tenderers shall keep their respective quotation valid and open for acceptance by the council until the expiry of 90 calendar days from the deadline for the receipt of quotations.

PROCUREMENT TIMETABLE

This procurement is intended to follow the time-line below:

1 Request for tender issued	Monday 14 March 2022
3 Last date for clarifications	Monday 28 March 2022
5 Deadline for tender responses	Monday 11 25 April 2022
6 Tender evaluations commence	Tuesday 12 26 April 2022
7 LTC consultation and evaluation period	Tuesday 12 26 April – Friday 15 29 April 2022
8 Contract awarded	Monday 18 April 4 May 2022
9 Initial project meeting	W/B Monday 18 April 2 May 2022
10. Contract Period	Monday 18 April 4 May – Friday 30 September
10 Project completion date	Friday 30 September 2022

Please note the council reserves the right to amend this timetable and steps following the deadline for tender responses are provided for indicative purposes only.

EVALUATION OF TENDERS

The council is not bound to accept the lowest or any tender submission. The council also reserves the right to accept the whole or any part of any tender submitted.

The council will check each tender initially to ensure it has kept to the rules of the RFQ process.

The Council reserves the right to seek clarification from any of the tenderers during the evaluation period.

This may be in writing or by means of a clarification meeting. This is to help the council to consider the tenders.

The Council may decide to interview tenderers or hold clarification meetings to help in our tendering process. The council will notify tenderers of this in due course.

The council will evaluate tenders against the award criteria set out below. The council will accept the tender which is most economically advantageous, i.e., a balance between cost and quality.

As part of the tender submission, we are seeking written submissions on how the individual elements of this contract will be delivered as well as a pricing submission. The overall tender will be evaluated against the written response (quality) based on experience, and general approach as well as the tender sum (price). We intend scoring each submission using a weighting metric as explained below.

PRICE

The council will base its decision based on a balance between quality and cost. This will be structured as 80% quality and 20% cost.

QUALITY

The quality elements will be scored by a panel and will receive a score of between 1 and 10 marks per criteria area. It may be possible that all responses are judged equal and receive the same score therefore leaving price as the deciding factor. However, it may be that the lowest tender is not the chosen tender if the quality questions are judged to be variable in answers. There is an individual weighting assigned to each criterion which identifies its importance and priority in relation to other areas.

The following quality questions will form part of your tender submission and count for a total of 80% of the decision. A summary of how marks are broken down across these areas is as follows:

Quality:	Individual Weighting	Possible Maximum
<i>Criteria B - Experience</i>	5	50
<i>Criteria C - References</i>	2	20
<i>Criteria D - Method Statement</i>	2	20
<i>Criteria E - Environmental considerations</i>	5	50
<i>Criteria F – Locality context</i>	4	40
<i>Criteria G - Timescale</i>	2	20
<i>Criteria H – Identified milestones</i>	3	30
<i>Criteria I – Identified outcomes</i>	5	50
<i>Totals</i>		280

The following descriptors explain how the panel will score each area based on the submissions received.

Scoring Outcomes

0-3	Completely unsatisfactory response – limited or no relevant information. Respondent would have serious difficulty delivering the required standard.
4	Fair response – Respondent would only meet some of the requirements of the contract some of the time.
5-6	Acceptable response – Respondent would be likely to meet basic contract standards but further work required to ensure standards are met consistently.
7-8	Good response – clearly indicating Respondent has fully understood and can apply and deliver all the required contract standards.
9-10	Excellent response - clearly indicating Respondent has fully understood and can apply and deliver all the required contract standards <u>and</u> includes robust and deliverable proposals to provide additional benefit to the Council.

If a score of 3 or less is given for any method statement the bid will be deemed to be non-compliant, will fail the tendering evaluation and will not be considered further. For any tenders so excluded, that tenderer's price shall be excluded from the 'price' evaluation.

SUPPLIER CHECKLIST

Suppliers should ensure that they have completed the following Schedules before returning their quotation responses:

<u>SCHEDULE HEADING</u>	<u>COMPLETED?</u>
Schedule 3 – Business Questionnaire	<input type="checkbox"/>
Schedule 4 – Legal Obligations	<input type="checkbox"/>
Schedule 5 – Pricing Schedule	<input type="checkbox"/>
Schedule 7 – Supporting Information (Parts A, B, C, D, E & F (if applicable))	<input type="checkbox"/>
Schedule 8 – Payment Details	<input type="checkbox"/>
Schedule 9 – Declaration	<input type="checkbox"/>
Schedule 10 – Contract Conditions Acceptance	<input type="checkbox"/>
Schedule 11 – Articles of Agreement	<input type="checkbox"/>
Schedule 12 – Collusive tendering Certificate	<input type="checkbox"/>
Schedule 13 – Supplier's Contact Information	<input type="checkbox"/>
Attach company's GDPR policy/procedures	<input type="checkbox"/>

It is important that all Schedules are completed as failure to do so may result in your quotation not being considered.

Contract documents

Any resulting Contract will consist of:

- the Contract Particulars in the form enclosed (to be filled in with relevant project-specific details following award) but not changed in other respects;
- the Standard Terms and Conditions;
- the successful tender.
- the specification
- the Pricing Schedule
- Supporting documents, consisting of:-
 - Schedule 3 – Business Questionnaire
 - Schedule 4 – Legal Obligations
 - Schedule 7 – Supporting Information Parts A, B, C, D & E (& F (if applicable to contract))
 - Schedule 8 – Payment Details
- Legal declarations, consisting of:-
 - Schedule 9 – Declaration
 - Schedule 10 – Contract Conditions Acceptance
 - Schedule 11 – Articles of Agreement
 - Schedule 12 – Collusive tendering Certificate
 - Schedule 13 – Supplier's Contact Information

Note for tenderer:

COLLUSIVE TENDERING CERTIFICATE. In recognition of the principle that the essence of selective tendering is that the client **shall receive bona fide competitive tenders from all** those tendering. **WE CERTIFY THAT :-** The tenders submitted herewith are bona fide tenders intended to be competitive

The Contract will be subject to English law and the exclusive jurisdiction of the English courts.

Suppliers who do not wish to offer a quotation following receipt of this opportunity are requested to advise the council's named contact of this as soon as possible.

Important notice

The Council has issued this Request for Quotation (RFQ) to all interested Tenderers, to allow them and their professional advisers to prepare a Quotation for this Contract and for no other purpose.

The Council gives this RFQ and any other documentation that the Council sends to Tenderers for this Quotation process, on the basis that they remain the Council's property and Tenderers must treat the contents as confidential. If Tenderers are unable or unwilling to keep to this rule, they:

- must destroy this RFQ and all associated documents at once; and
- must not keep any electronic or paper copies.

Tenderers must not take part in any publicity activities with any part of the media about the Contract or this RFQ process without attaining the council's written agreement first. This includes the council's agreement on the format and content of any publicity.

This RFQ is made available in good faith. The council give no warranty as to the accuracy or completeness of the information contained in it. The council also disclaim any liability for any inaccuracy or incompleteness. The council reserve the right to cancel the tender process at any point. The council is not liable for any costs resulting from any cancellation of this tender process or for any other costs that Tenderers may incur by Tendering for this Contract. Tenderers must obtain at their own expense, all the information that they need for the preparation of their Tender.

Tenderers will be deemed to fully understand the processes that the council must follow under relevant European and UK legislation, particularly The Public Contracts Regulations 2015 and Public Contracts (Amendment) Regulations 2009.

2 SPECIFICATION

Project name and ref)

Contract Duration: 18 April 2022 – 30 September 2022 – **No extensions apply**

Timetable – see page 3 of this document

Reporting and Monitoring – Calendar monthly - see page 31 of this document

The deliverables of this project are identified as follows:

OUTPUT 1: Town Centre Feasibility Study and Active Travel Assessment

OUTPUT 2: Town Centre Health Check

OUTPUT 1: Town Centre Feasibility Study and Active Travel Assessment

1. To undertake an assessment of the town centre's current road, walking and cycling networks. The assessment will identify a range of technically feasible opportunities to facilitate a less car dominant environment in key areas of the town centre and prioritise walking and cycling. Recommendations from the assessment will also establish preferred options. Through discussion with Cornwall Council Transport Officers, the assessment proposals would build on existing plans, such as Launceston Town Framework Transport Strategy 2030. Consideration of future transport links between the locations of key employment, residential and education settings and other community facilities, emphasising reduced traffic connections with the town centre, is essential.
2. To make costed (phased or whole delivery) recommendations to create a less car dominant town centre, enhance and improve the public realm, identifying opportunities to increase dwell time, create more social space to showcase the historic character of the town and identify spaces capable of flexible use such as pop-up commerce, creative arts and performance.
3. To provide an access audit and recommendations for making the town more inclusive for all.
4. To assess town centre biodiversity and make recommendations to improve and increase what is currently in place. Options to include, but not restricted to, tree lining, landscaping, planters, living wall(s), in addition to innovative ideas and solutions yet to be realised. Providing relevant technical survey reports and feasible opportunities with suggested site locations and preferred options. Consideration for local and national environment, biodiversity and climate change strategies, best practice and engagement with Cornwall Council Arboriculture Officers.
5. Undertake public and stakeholder consultation, following an agreed methodology, recording and collating responses to produce a summary document of findings.

OUTPUT 2: Town Centre Health Check

1. Conduct a retail impact assessment and report on baseline data that provides recommendations that target empty and underused premises, improves aesthetics and assists with future planning applications.
2. Analyse and identify empty and underused premises as well as outside space to:
 - i. Create a shortlist of properties where there is a potential for repurposing to include but not restricted to support for pop up shops and heritage usage or which have a demonstrable benefit for the town centre.
 - ii Identify landlords/owners/lease availability of town centre property to prioritise opportunity sites/buildings against short list.
 - iii. Create of a Feasibility Study that shows how redevelopment/re-purposing can help meet a variety of local needs and future growth in line with the Launceston Town Framework Plan and Southern Growth Area Concept Plan
3. Engage a qualified specialist to project manage and coordinate all stakeholders, oversee consultants, procure advice and capture ideas, to develop feasibility designs and concept plans to include options for improving the town with considerations for increasing dwell time, air quality, biodiversity, improving links to/from the town centre, safer, green streets, enhance the town centre experience and maximising outdoor space.
4. Provide capital costs for each individual element of the project to include a total budget envelope and include a contingency element.
5. Undertake public and stakeholder consultation, following an agreed methodology, record and collate responses to produce a summary document of findings.

On completion of the project, Launceston Town Council will provide Cornwall Council with relevant and full copy documents relating to the SAFER GREENER STREETS - Launceston Town Centre - Connected, Sustainable and Thriving Project (deliverables) funded by the Town Vitality Fund.

Council Policies

In addition to the services outlined in the specification, the Contractor shall comply with all Council policies and codes of practice, links to policies are detailed below.

- [Code of Conduct](#)
- [Complaints Procedure](#)
- [Equalities Policy](#)
- [GDPR](#)

- [Health & Safety Policy](#)
- [Publication Scheme](#)
- [Standing Orders](#)
- [Use of Social Media in Council Meetings](#)
- [Safeguarding Policy](#)

3 - Business Questionnaire

IMPORTANT PLEASE READ FIRST:

Bidders must answer these questions in complete honesty.

The Council may decide to question further into these areas

Should the Council discover any discrepancies or that the bidder has been dishonest with its answers, this will result in the bidder being rejected from the tender process or if awarded a contract having its contract terminated with immediate effect.

Award criteria and disqualification

All questions in this Schedule are mandatory and will be deemed pass/fail.

If a fail is achieved for any of the business questionnaire questions the bid will be excluded from progressing to the further stages of the tendering process. Therefore, the council will disregard the bid and subsequent schedules of the tendered response will not be evaluated.

1. FINANCIAL INFORMATION

- 1.1 Please confirm whether your turnover is at least the minimum of twice the annual estimated value of this contract. The estimated annual value of this contract is £99,000

Yes/No

Bidders who answer 'No' will fail the Business questionnaire.

2. INSURANCE

The Council has reviewed its current policy regarding insurance covers and requires all contractors to provide the following:

Employer's Liability £10 million

(Except for sole traders)

Public Liability £10 million

Professional Indemnity cover £1 million

- 2.1 Please confirm that your organisation has the required level of cover or is prepared to obtain the level of cover prior to award?

Yes have levels of cover already and will continue to for this contract

☐

No but will provide the Council's level of cover if awarded the contract

☐

No have not got cover and will not provide the Council's required level of cover

☐

Bidders who cannot provide this level of cover will fail the Business questionnaire.

3. ENVIRONMENT

- 3.1 Do you have an environmental policy? If so, please provide a copy of your environmental policy – *label as 3.1*

Yes/No/Not Applicable

Bidders who answer 'Yes' and provide a copy of the policy will Pass, Bidders who answer 'No' and have 5 or more employees will fail the business questionnaire unless they submit a policy with this document. If you are a sole trader or a business with less than 4 staff, please select 'N/A' which will qualify as a Pass.

Bidders who answer 'Yes' to having an Environmental Policy will only receive a Pass if a copy of the policy is provided.

4. PROFESSIONAL & BUSINESS STANDING

- 4.1 Has your organisation, at any time during the last 3 years, been in a state of bankruptcy, insolvency, compulsory winding up, administration, receivership, composition with creditors or any analogous state, or subject to relevant proceedings where the proceedings were commenced for valid reasons?

Yes/No

Bidders who answer 'Yes' will fail the Business questionnaire.

- 4.2 Has your organisation, its directors or any other person who has the power of representation, decision or control of the named organisation ever been convicted of a criminal offence related to business or professional conduct, including fraud or conspiracy to defraud?

Yes/No

Bidders who answer 'Yes' will fail the Business questionnaire.

- 4.3 Does your organisation hold all relevant licences, qualifications and memberships for this contract as required by law?

Yes/No

Bidders who answer 'No' will fail the Business questionnaire.

5. DISPUTES

- 5.1 Has your organisation had any judgement made against it in relation to similar contracts in the last three years?

Yes/No

Bidders who answer 'Yes' please provide a brief description of the judgement and provide details of any procedures that have been implemented with the aim to prevent this from

occurring again – a pass will only be awarded if suitable procedures have been implemented - label response as 5.1, no more than 400 words per contract description.

- 5.2 Has your organisation been involved in any tribunal hearing in relation to any similar service in the last three years, which has resulted in a judgement being made against it?

Yes/No

Bidders who answer ‘Yes’ please provide a brief description of the judgement and provide details of any procedures that have been implemented with the aim to prevent this from occurring again – a pass will only be awarded if suitable procedures have been implemented - label response as 5.2, no more than 400 words per contract description.

IMPORTANT PLEASE READ FIRST:

Bidders must answer these questions in complete honesty.

The Council may decide to question further into these areas

Should the Council discover any discrepancies or that the bidder has been dishonest with its answers, this will result in the bidder being rejected from the tender process or if awarded a contract having its contract terminated with immediate effect.

Award criteria and disqualification

All questions in this schedule are mandatory and will be deemed pass/fail.

If a fail is achieved for any of the Legal Obligations questions the bid will be excluded from progressing to the further stages of the tendering process. Therefore, the council will disregard the bid and subsequent schedules of the tendered response will not be evaluated.

1. LEGAL OBLIGATIONS

- 1.1 Is it your organisation's policy as an employer to comply with its statutory obligations with regards to groups with Protected Characteristics under the Equalities Act 2010?

Yes/No

Bidders who answer 'No' will fail the Legal Obligations Schedule.

- 1.2 Organisations that employ 5 or more staff are legally required to have a written Equalities Statement. Please confirm if you have a statement and that it is communicated within your organisation, or less than 5 staff.

Yes, I have a Statement	<input type="checkbox"/>
Organisation has less than 5 staff	<input type="checkbox"/>
No Statement & 5 or more staff	<input type="checkbox"/>

Please note that answering 'No statement & 5 or more staff' will result in bidders automatically failing the Legal Obligations Schedule.

- 1.3 Does your organisation comply with the Health and Safety at Work Act 1974?

Yes/No

Bidders who answer 'No' will fail the Legal Obligations Schedule.

- 1.4 Suppliers that employ 5 or more staff are legally required to have a written Health and Safety Policy and Risk Assessments. Please confirm if you have a policy & risk assessment, or less than 5 staff

Yes, I have a Policy & Risk assessments	<input type="checkbox"/>
Organisation has less than 5 staff	<input type="checkbox"/>
No Policy & Risk Assessments and 5 or more staff	<input type="checkbox"/>

Please note answering 'No policy & Risk assessments and 5 or more staff' will result in bidders automatically failing the Legal Obligations schedule.

- 1.5 Has your organisation, its directors or any other person who has the power of representation, decision or control of the named organisation ever been convicted of slavery, servitude, forced or compulsory labour, child labour or an offence in human trafficking and other forms of trafficking in human beings within the last five years

Yes/No

Bidders who answer 'Yes' to question 1.5 will automatically fail the Legal Obligations schedule.

- 1.6 In accordance with the Modern Slavery Act 2015 all organisations carrying out business within the UK, with a total annual turnover of £36m or more are required to produce a slavery and human trafficking statement for each financial year.

Please confirm if your organisation has an annual turnover of £36m or more

Yes/No

If you answered yes to the above question, please confirm that you are compliant with the annual reporting requirements contained within Section 54 of the Act 2015?

Yes/No

Bidders who answer 'No' to question 1.6 and who have an annual turnover of over £36m or more will automatically fail the Legal Obligations schedule. Bidders who answer yes to question 1.6 will be asked to provide evidence of the annual report upon award of contract.

The council has a legal responsibility to ensure that contractors that work directly or indirectly with vulnerable people meet with Safeguarding requirements. Please refer to document titled 'Guidance for Safeguarding provisions' to establish whether or not a safeguarding policy is required to deliver this contract. Only remove this question if a safeguarding policy is not required.

- 1.7 Do you have a Safeguarding policy?

Yes, I have safeguarding policy

☐

No but will comply with LTC's safeguarding policies pending development of your own safeguarding policy and procedures prior to award

☐

No have not got a safeguarding policy and will not comply with the Council's policy

☐

Bidders who answer 'Yes' to having an Safeguarding Policy will only receive a Pass if a copy of the policy is provided – label as 1.7

Bidders who answer 'No but will comply with LTC's safeguarding policies prior to award' please provide a method statement that details your proposed methodology to ensure compliance with, and the promotion of the principles contained in the LTC Safeguarding Policies and Procedures as well as the development of your own safeguarding policy– label as 1.7

Please refer to the below link for CBC's safeguarding policies:-

<https://launceston-tc.gov.uk/the-council/policies-and-procedures>

Bidders who answer 'No have not got a policy and will not comply with the council's policy' will fail the Legal Obligations schedule

5 - PRICING SCHEDULE

Contract name and ref)

Prices are to be submitted in Pounds Sterling and exclusive of VAT. It should be assumed that all the requirements under the specification should be included in the costing proposal.

Note – You may adjust the size of the following text boxes to suit your response.

Costs

The costs should be broken down into components with a full description of each component and its associated costs.

	Service component description	Costs (£)
Output 1		
1.1 Undertake an assessment of the town centre's current road, walking and cycling networks		
1.2 Make costed (phased or whole delivery) recommendations to create a less car dominant town centre		
1.3 Provide an access audit and recommendations for making the town more inclusive for all		
1.4 Assess town centre biodiversity and make recommendations to improve and increase what is currently in place.		
1.5 Undertake public and stakeholder consultation		
OUTPUT 2		
2.1 Conduct a retail impact assessment and report on baseline data		
2.2 Analyse and identify empty and underused premises as well as outside space i. Create a shortlist of properties where there is a potential for repurposing ii Identify landlords/owners/lease availability of town centre property iii. Create of a Feasibility Study that shows how redevelopment/re-purposing can help meet a variety of local needs		
2.3 Engage a qualified specialist to project manage		
2.4 Provide capital costs for each individual element of the project		
2.5 Undertake public and stakeholder consultation of findings.		
	Total Costs (£) *	£

For full details of OUTPUTs, refer to pages 9 and 10 of this document

* No additional costs will be considered by the Council.

Please confirm you agree to a fixed price period 18 April 2022 – 30 September 2022

Yes ☐ No ☐

Note to supplier - All pages, as issued must be returned within your Quotation submission. Do not remove any pages from this quotation document as all pages, method statements, supporting documents and appendices will form the final contract.

1. Definitions and Interpretation
2. Term
3. Extending the initial term
4. Due diligence and Supplier's warranty
5. Supply of Services
6. Service standards
7. Compliance
8. Payment
9. Contract Representative
10. Other personnel used to provide the services
11. Tupe And Re-Tendering
12. Reporting and Meetings
13. Monitoring
14. Change control
15. Dispute resolution
16. Sub-Contracting and assignment
17. Indemnities
18. Limitation of liability
19. Insurance
20. Freedom of information
21. Data processing
22. Confidentiality
23. Audit
24. Intellectual property
25. Termination for breach
26. Termination on notice
27. Force majeure
28. Prevention of bribery
29. Consequences of termination or Expiry
30. Waiver
31. Severability
32. Partnership or agency
33. Publicity
34. Notices
35. Jurisdiction
36. Abnormally low Tenders
37. Corporate Policies
38. Indexation
39. Variations
40. KPI's
41. Modern Slavery, Child Labour and Inhumane Treatment
42. Safeguarding - delete if not applicable

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation in this clause apply in this agreement.

Abnormally Low Tenders: Tenders that require investigation in regard to their sustainability.

Achieved KPI's: in respect of any Service, in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 2 – Specification). **Bribery Act:** The Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Catastrophic Failure: any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Launceston Town Council's Authorised Representative has or may cause significant harm to the reputation of the Launceston Town Council

Change: any change to this agreement including to any of the Services.

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change Control Procedure: the procedure for changing this agreement, as set out in clause 14.1-14.9.

Charges: the charges which shall become due and payable by the Launceston Town Council to the Supplier in respect of the Services provided in accordance with the provisions of this agreement, as such charges are set out in Schedule 5 – Pricing Schedule.

Commencement Date: the date of this agreement.

Commercially Sensitive Information: the information listed in the Contract Particulars comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to Launceston Town Council that, if disclosed by Launceston Town Council, would cause the Supplier significant commercial disadvantage or material financial loss.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a. any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b. any information developed by the parties in the course of carrying out this agreement;
- c. Personal Data;
- d. any Commercially Sensitive Information.

Contracts Finder: the government's publishing portal for public sector procurement opportunities.

Contract Period: a period of 5 months 12 days, commencing on the 18 April 2022 – 30 September 2022

Contract Representatives: the persons respectively designated as such by the Launceston Town Council and the Supplier, the first such persons being set out in the Contract Particulars

Corporate policies: the Supplier shall comply with all Launceston Town Council policies as set out in clause 37.

Data Controller: shall have the same meaning as set out in the Data Protection Legislation.

Data Processor: shall have the same meaning as set out in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.

Data Subject: shall have the same meaning as set out in the Data Protection Legislation.

Default Notice: is defined in Clause 5.2.

Dispute Resolution Procedure: the procedure set out in Clause 15.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Exit Management Plan: the plan set out in the Contract Particulars

Extension period: shall have the meaning given to it in Clause 3.1.

FOIA: the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any circumstance not within a party's reasonable control including, without limitation:

- a. acts of God, flood, drought, earthquake or other natural disaster;
- b. epidemic or pandemic;
- c. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d. nuclear, chemical or biological contamination or sonic boom;
- e. any law or action taken by a government or public Launceston Town Council, including without limitation imposing an export or import restriction, quota or prohibition;
- f. collapse of buildings, fire, explosion or accident; and
- g. any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier).

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

Health and Safety Policy: the health and safety policy of the Launceston Town Council as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

Indexation: is defined in clause 38

Information: has the meaning given under section 84 of FOIA.

Initial Term: the period commencing on the Commencement Date of 18 April 2022 and ending on the 30 September 2022 – Note there are no extension periods

Insolvency Event: where:

- a. 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 or limited liability partnership) 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];
- b. 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 [other than (being a company) 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 that other party];
- c. 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, limited liability partnership or partnership) [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- d. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- e. the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- f. 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;
- g. the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- h. 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 the other party's assets and such attachment or process is not discharged within 14 days;
- i. 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 (a) to (h) (inclusive); [or]
- j. the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business[]; or]
- k. the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Key Personnel: those personnel identified in the Contract Particulars for the roles attributed to such personnel, as modified pursuant to Clauses 9 and 10.

KPI's: the key performance indicators set out in Schedule 2 - Specification **relating to Launceston Safer**

Greener Streets Project

Law: any law, statute, 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, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the supplier is bound to comply.

Management Reports: the reports to be prepared and presented by the Supplier in accordance with Schedule 2 - Specification to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs. **Reports to be submitted on a calendar monthly basis.**

Modern Slavery Act: the Modern Slavery Act 2015 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

Payment Plan: the plan for payment of the Charges as set out in Schedule 5 – Pricing Schedule and Schedule 8 – Payment Details of this Contract. Invoicing for the constituent parts of this project may be submitted following the completion of outputs as identified on page 18 of this document.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

- a. to directly or indirectly offer, promise or give any person working for or engaged by the Launceston Town Council a financial or other advantage to: (i) induce the person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;
- b. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- c. committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Launceston Town Council;
- d. any activity, practice or conduct which would constitute one of the offences listed under (a) to (c), if such activity, practice or conduct had been carried out in the UK.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by Launceston Town Council in accordance with Clause 25.1(a).

Replacement Services: any services that are identical or substantially similar to any of the Services and which Launceston Town Council receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by Launceston Town Council internally or by any Replacement Supplier.

Replacement Supplier: any third-party supplier to provide the Replacement of Services appointed by Launceston Town Council from time to time.

Representatives: means, in relation to a party, its employees, officers, representatives and advisors.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Services: the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 2 -Specification.

Service Failure: a shortfall or failure by the Supplier to provide the Services in accordance with any Target KPI, as specified in Schedule 2 – Specification.

Supplier Party: the Supplier’s agents and contractors, including each Sub-Contractor.

Supplier’s Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Supplier’s Tender: the tender submitted by the Supplier and other associated documentation as described in Schedule 1 – Preamble – Suppliers Checklist

Sub-Contract: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or suppliers that enter into a Sub-Contract with the Supplier.

Target KPI: as specified in Schedule 2 - Specification

Term: the period of the Initial Term as may be varied by:

- a. any Extension Period; **N/A for this project**
- b. the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this agreement.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*).

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

Variations: a request to the Supplier to make any reasonable alteration to the Contract or any Order pursuant thereto (herein referred to as a ‘Variation’)

Working Day: ~~(Buyer insert required working days, i.e. Monday to Friday), excluding any public holidays in England and Wales.~~ **Not applicable for this project**

Working Hours: ~~the period from (Buyer insert expected working hrs XXam to XXpm on any Working Day.~~ **Not applicable for this project**

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

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

1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.

1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.

1.9 A reference to **writing** or **written** includes delivered by hand or by pre-paid post, emailed ~~and by fax.~~

1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.11 A reference in this agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.12 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.

1.13 If there is any conflict or inconsistency between the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of the agreement;
- (b) the Services to be supplied and installed by the Supplier to Launceston Town Council and any variation or modification issued by Launceston Town Council thereto Schedule 2 - The Specification;
- (c) the remaining schedules to this agreement other than Schedule 5 - Pricing Schedule and Schedule 7 – Supporting Documents.;
- (d) Schedule 5 - Pricing Schedule and Schedule 7 – Supporting Documents to this agreement.

COMMENCEMENT AND DURATION

2. TERM

2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

3.1 Because of the funding source of this project Launceston Town Council cannot extend this project beyond the end date.

~~3.2 If Launceston Town Council gives such notice then the Term shall be extended by the period set out in the notice.~~

~~3.3 If Launceston Town Council does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of Clause 29 shall apply.~~

4. DUE DILIGENCE AND SUPPLIER'S WARRANTY

4.1 The Supplier acknowledges and confirms that:

(a) Launceston Town Council has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;

(b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of Launceston Town Council pursuant to Clause 4.1(a);

(c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with Launceston Town Council before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Launceston Town Council Premises); and

(d) it has entered into this agreement in reliance on its own due diligence.

4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by Launceston Town Council in respect of any information which is provided to the Supplier by Launceston Town Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.3 The Supplier:

(a) warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender or response to any Selection questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to Launceston Town Council prior to execution of the agreement; and

(b) shall promptly notify Launceston Town Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by Launceston Town Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.

4.4 Nothing in this Clause 4 shall limit or exclude the liability of Launceston Town Council for fraud or fraudulent misrepresentation.

THE SERVICES

5. SUPPLY OF SERVICES

5.1 The Supplier shall provide the Services to Launceston Town Council with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including without limitation Schedule 2 - Specification.

5.2 In the event that the Supplier does not comply with the provisions of Clause 5.1 in any way, Launceston Town Council may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).

6. SERVICE STANDARDS

The Supplier shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with Best Industry Practice;
- (b) in all respects in accordance with Launceston Town Council's policies set out in Schedule 2 - Specification; and
- (c) in accordance with all applicable Law.

7. COMPLIANCE

7.1 The Supplier shall (and shall procure that the Supplier's Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Health and Safety Policy whilst at Launceston Town Council Premises or sites related to this project.

7.2 Without limiting the general obligation set out in Clause 6, the Supplier shall (and shall procure that the Supplier's Personnel shall):

- (a) perform its obligations under this agreement 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);
 - (ii) Launceston Town Council's Equalities' Policy (which can be found on Launceston Town Council's website at:

<https://web.launceston-tc.gov.uk/wp-content/uploads/2018/07/LTC-Equalities-Policy-2015.pdf>

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

(b) take all necessary steps, and inform Launceston Town 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); and

(c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as Launceston Town Council requests so as to enable the council to comply with its obligations under the Human Rights Act 1998.

CHARGES AND PAYMENT

8. PAYMENT

8.1 The supplier shall supply the Services described in the Specification in accordance with the terms and conditions of this agreement, Launceston Town Council shall pay the Charges to the Supplier in accordance with Schedule 5 – Pricing Schedule and Schedule 8 – Payment Details.

8.2 Unless otherwise stated in Schedule 5 – Pricing Schedule, the Charges:

(a) shall remain fixed during the Term; and

(b) is the entire price payable by Launceston Town Council to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier's Personnel.

8.3 The Supplier shall invoice Launceston Town Council for payment of the Charges in accordance with Schedule 5 – Pricing Schedule and Schedule 8 – Payment Details. All invoices shall be directed to Launceston Town Council's Responsible Finance Officer and shall contain such information as Launceston Town Council may inform the Supplier from time to time.

8.4 Launceston Town Council shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which Launceston Town Council has determined that the invoice is valid and undisputed.

8.5 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

(a) provisions having the same effect as Clause 8.1 to Clause 8.4 of this agreement; and

(b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Clause 8.1 to Clause 8.4 of this agreement.

In this Clause 8.5, “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from Launceston Town Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

8.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Launceston Town Council following delivery of a valid VAT invoice. The Supplier shall indemnify the Launceston Town Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Launceston Town Council at any time in respect of the Supplier’s failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.

8.7 Where any party/Launceston Town Council disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with Clause 15.

STAFF

9. CONTRACT REPRESENTATIVES

9.1 Each party shall appoint the persons named as such in the Contract Particulars as the individuals who shall have Launceston Town Council to act on behalf of their respective party.

9.2 The Supplier shall not remove or replace any of the Contract Representatives unless:

- (a) requested to do so by Launceston Town Council;
- (b) the person is on long-term sick leave;
- (c) the element of the Services in respect of which the individual was engaged has been completed to Launceston Town Council’s satisfaction;
- (d) the person resigns from their employment with the Supplier; or
- (e) the Supplier obtains the prior written consent of Launceston Town Council.

9.3 The Supplier shall inform Launceston Town Council of the identity and background of any replacements for any of the Contract Representatives as soon as a suitable replacement has been identified. Launceston Town Council shall be entitled to interview any such person and may object to any such proposed appointment within 30 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

9.4 Each party shall ensure that the role of each of its Contract Representatives is not vacant (in terms of a permanent representative) for more than 30 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent. A temporary replacement shall be identified with immediate effect from the Supplier the Launceston Town Council becoming aware of the role becoming vacant.

9.5 Launceston Town Council may require the Supplier to remove, or procure the removal of, any of its

Contract Representative whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

9.6 If the Supplier replaces the Contract Representative as a consequence of this Clause, the cost of effecting such replacement shall be borne by the Supplier.

10. OTHER PERSONNEL USED TO PROVIDE THE SERVICES

10.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Supplier's Personnel comply with all of Launceston Town Council's policies.

10.2 The Supplier shall replace any of the Supplier's Personnel who Launceston Town Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

10.3 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and shall provide information to Launceston Town Council as Launceston Town Council reasonably requests on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

11 TUPE AND RE-TENDERING

11.1 In the event of expiry or termination of this Contract or whenever reasonably requested by Launceston Town Council in preparation for tendering arrangements the Supplier will provide Launceston Town Council with such assistance as Launceston Town Council may require and provide at no cost to Launceston Town Council any information the council (whether on its own account or on behalf of any potential or confirmed Replacement Supplier) may request in relation to the Employees including but not limited to, providing Employee liability information as required under Regulation 11 of TUPE.

11.2 The Supplier authorises Launceston Town Council to pass any information supplied to any Replacement Supplier or potential Replacement Supplier and the Supplier will secure all necessary consents from relevant Employees in order to do this.

11.3 The Supplier will keep Launceston Town Council and any Replacement Supplier indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or

inaccuracies in or omissions from the information provided.

12. REPORTING AND MEETINGS

12.1 The Supplier shall provide the Management Reports in the form and at the intervals set out in Schedule 2 -Specification. Calendar monthly reports are required throughout this project.

12.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Schedule 2 -Specification and the Supplier shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

13. MONITORING

13.1 Launceston Town Council may monitor the performance of the Services by the Supplier

13.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with Launceston Town Council in carrying out the monitoring referred to in Clause 13.1 at no additional charge to Launceston Town Council.

14. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT

14.1 Any requirement for a Change shall be subject to the Change Control Procedure. Where Launceston Town Council or the Supplier sees a need to change this agreement, Launceston Town Council may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in Clauses 14.1-14.9

14.2 Until such time as a Change is made in accordance with the Change Control Procedure, Launceston Town Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.

14.3 Any discussions which may take place between Launceston Town Council and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

14.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this clause 14, shall be undertaken entirely at the expense and liability of the Supplier.

PROCEDURE

14.5 Discussion between Launceston Town Council and the Supplier concerning a Change shall result in any one of the following:

(a) no further action being taken; or

(b) a request to change this agreement by Launceston Town Council; or

(c) a recommendation to change this agreement by the Supplier.

14.6 Where a written request for a Change is received from Launceston Town Council, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to Launceston Town Council within three weeks of the date of the request.

14.7 A recommendation to amend this agreement by the Supplier shall be submitted directly to Launceston Town Council in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. Launceston Town Council shall give its response to the Change Control Note within three weeks.

14.8 Each Change Control Note shall contain:

- (a) the title of the Change;
- (b) the originator and date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note;
- (j) provision for signature by Launceston Town Council and the Supplier; and
- (k) if applicable, details of how costs incurred by the parties if the Change subsequently results in the termination of this agreement will be apportioned.

14.9 A Change Control Note signed by Launceston Town Council and by the Supplier shall constitute an amendment to this agreement.

15. DISPUTE RESOLUTION

15.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then [except as expressly provided in this agreement,] the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

(b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. [A copy of the ADR notice should be sent to CEDR.] The mediation will start not later 90 days after the date of the ADR notice.

15.2 No party may commence any court proceedings in relation to any dispute arising out of this agreement until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

15.3 Each party shall be responsible for their own costs in relation to the dispute resolution process with equal sharing of third party costs.

16. SUB-CONTRACTING AND ASSIGNMENT

16.1 Subject to Clause 16.3, neither party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of Launceston Town Council, such consent not to be unreasonably withheld.

16.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:

(a) remain responsible to Launceston Town Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

(b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and

(c) provide a copy, at no charge to Launceston Town Council, of any such Sub-Contract on receipt of a request for such by Launceston Town Council's Contract Representative.

16.3 Launceston Town Council shall be entitled to novate (and the Supplier shall be deemed to consent to

any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by Launceston Town Council.

16.4 Provided that Launceston Town Council has given prior written consent, the Supplier shall be entitled to novate the agreement where:

(a) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

LIABILITY

17. INDEMNITIES

17.1 The Supplier shall indemnify and keep indemnified Launceston Town Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or Sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable Law by Launceston Town Council or its Representatives (excluding any Suppliers Personnel).

18. LIMITATION OF LIABILITY

18.1 Subject to Clause 18.2, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

18.2 Notwithstanding the provisions of Clause 18.1, the Supplier assumes responsibility for and acknowledges that Launceston Town Council may, amongst other things, recover:

(a) sums paid by Launceston Town Council to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the agreement;

(b) wasted expenditure;

(c) additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;

(d) losses incurred by Launceston Town Council arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Supplier's Personnel, regulator or customer of the council) against Launceston Town Council caused by the act or omission of the Supplier;

18.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage

arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.

18.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
- (c) breach of any obligation as to title implied by statute; or
- (d) any other liability for which may not be limited under any applicable law.

19. INSURANCE

19.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims; (except for sole traders)
- (c) professional indemnity insurance with a limit of indemnity of not less than £1,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

19.2 The Supplier shall give Launceston Town Council, prior to the commencement date, copies of all insurance policies referred to in this clause

19.3 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

19.4 The Supplier shall hold and maintain the Required Insurances for a minimum of 12 Months following the expiration or earlier termination of the agreement.

INFORMATION

20. FREEDOM OF INFORMATION

20.1 The Supplier acknowledges that Launceston Town Council is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by Launceston Town Council to enable Launceston Town Council to comply with its obligations under the FOIA and EIRs;
- (b) transfer to Launceston Town Council all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) provide Launceston Town Council with a copy of all Information belonging to Launceston Town Council requested in the Request For Information which is in its possession or control in the form that the council requires within 5 Working Days (or such other period as Launceston Town Council may reasonably specify) of the council's request for such Information; and

(d) not respond directly to a Request For Information unless authorised in writing to do so by Launceston Town Council.

20.2 The Supplier acknowledges that Launceston Town Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Launceston Town Council shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) Launceston Town Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

20.3 Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

20.4 Launceston Town Council shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with Launceston Town Council to enable Launceston Town Council to publish this agreement.

21. DATA PROCESSING

21.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This *Clause* is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this *Clause*, **Applicable Laws** means Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

21.2 The parties acknowledge that for the purposes of the Data Protection Legislation, Launceston Town Council Town Clerk is the Data Controller and the Supplier is the Data Processor.

21.3 Without prejudice to the generality of Clause 21.1, Launceston Town Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

21.4 Without prejudice to the generality of Clause 21.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

(a) process that Personal Data only on the written instructions of Launceston Town Council (as set out in Schedule 2 – Specification and Appendix A - GDPR, if applicable), unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is so required, it shall

promptly notify Launceston Town Council before processing the Personal Data, unless prohibited by the Applicable Laws;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Launceston Town Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

(c) not transfer any Personal Data outside of the UK, ~~European Economic Area~~ unless the prior written consent of Launceston Town Council has been obtained and the following conditions are fulfilled:

(i) Launceston Town Council or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the Data Subject has enforceable rights and effective remedies;

(iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Supplier complies with the reasonable instructions notified to it in advance by the Launceston Town Council with respect to the processing of the Personal Data;

(d) notify Launceston Town Council immediately if it receives:

(i) a request from a Data Subject to have access to that person's Personal Data;

(ii) a request to rectify, block or erase any Personal Data;

(iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);

(e) assist Launceston Town Council in responding to any request from a Data Subject and in ensuring compliance with Launceston Town Council's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify Launceston Town Council immediately [and in any event within 24 hours] on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;

(g) at the written direction of Launceston Town Council, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;

(h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 21 and allow for audits by Launceston Town Council or Launceston Town Council's designated auditor pursuant to Clause 23;

21.5 The Supplier shall indemnify Launceston Town Council against any losses, damages, cost or expenses incurred by Launceston Town Council arising from, or in connection with, any breach of the Supplier's obligations under this Clause 21.

21.6 Where the Supplier intends to engage a Sub-Contractor pursuant to Clause 16 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

- (a) notify Launceston Town Council in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent to the processing;
- (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this Clause 21.1-21.8

21.7 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this Clause 21 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).

21.8 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

22. CONFIDENTIALITY

22.1 Subject to Clause 22.2, each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 22.1- 22.4

22.2 The obligation to maintain confidentiality of Confidential Information does not apply to any confidential information:

- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
- (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process

in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;

(d) which is in or enters the public domain other than through any disclosure prohibited by this agreement;

(e) which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or

(f) which is disclosed by Launceston Town Council on a confidential basis to any central government or regulatory body.

22.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:

(a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

(b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,

(c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this Clause 22.

22.4 The provisions of this Clause 22 shall survive for a period of 7 years from the Termination Date.

23. AUDIT

23.1 During the Term and for a period of 3 years after the Termination Date, Launceston Town Council (acting by itself or through its Representatives) may conduct an audit of the Supplier, including for the following purposes:

(a) to review the integrity, confidentiality and security of any data relating to Launceston Town Council or any service users;

(b) to review the Supplier's compliance with the Data Protection Legislation, the FOIA, in accordance with Clause 21 (Data Processing) and Clause 20 (Freedom of Information) and any other legislation applicable to the Services;

(c) to carry out the audit and certification of Launceston Town Council's accounts;

(d) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Launceston Town Council has used its resources;

(e) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.

23.2 Except where an audit is imposed on the Launceston Town Council by a regulatory body, Launceston

Town Council may not conduct an audit under this Clause 23 more than once in any calendar year.

23.3 Launceston Town Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the delivery of Services.

23.4 Subject to Launceston Town Council's obligations of confidentiality, the Supplier shall on demand provide Launceston Town Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;
- (b) reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the contract provision; and
- (c) access to the Supplier's Personnel.

23.5 Launceston Town Council shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.

23.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Launceston Town Council for all the Launceston Town Council's reasonable costs incurred in the course of the audit.

24. INTELLECTUAL PROPERTY

24.1 In the absence of prior written agreement by Launceston Town Council to the contrary, all Intellectual Property Rights created by the Supplier or Supplier's Personnel:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services, shall vest in the Launceston Town Council on creation.

24.2 The Supplier shall indemnify Launceston Town Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Launceston Town Council's acts or omissions.

TERMINATION

25. TERMINATION FOR BREACH

25.1 Launceston Town Council may terminate this agreement with immediate effect by the service of written notice on the Supplier in the following circumstances:

- (a) if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Launceston Town Council may only terminate this agreement under this Clause 25.1 if the Supplier has failed to remedy such breach within 14 days of receipt of notice from the Launceston Town Council (a **Remediation Notice**) to do so;
- (b) if a Catastrophic Failure has occurred;
- (c) if there is an Insolvency Event.

25.2 Launceston Town Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.

- (a) The Agreement is subject to a substantial modification which requires a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015 (“the Regulations”);
- (b) It can be demonstrated that the Contractor has, at the time of contract award been in one of the situations referred to in Regulation 57(1) of the Regulations including as a result of the application of Regulation 57(2) of the Regulations and should therefore have been excluded from the procurement procedure;
- (c) It can be demonstrated that this Agreement should not have been awarded to the Contractor in view of a serious infringement of the obligations of Treaties and the Public Contracts Directive of the EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

25.3. Launceston Town Council may terminate this agreement in accordance with the provisions of Clause 26 and Clause 28.

25.4 If this agreement is terminated by Launceston Town Council pursuant to this Clause 25, such termination shall be at no loss or cost to the Launceston Town Council and the Supplier hereby indemnifies Launceston Town Council against any such losses or costs which the Council may suffer as a result of any such termination.

26. TERMINATION ON NOTICE

Without affecting any other right or remedy available to it, Launceston Town Council may terminate this agreement at any time by giving 3 months’ written notice to the Supplier.

27. FORCE MAJEURE

27.1 Neither party will be liable for any delay in or from performing any of its obligations under this agreement by circumstances beyond its reasonable control. The party in delay shall notify the other party as soon as reasonably practicable, in writing of the reason, likely duration and the effect on its ability to perform any of its obligations under the agreement; and use all reasonable endeavours to mitigate any such

effect.

28. PREVENTION OF BRIBERY

28.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

28.2 The Supplier shall not during the Term:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause Launceston Town Council or any of the Launceston Town Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

28.3 The Supplier shall during the Term:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under Clause 28.3(a) and make such records available to Launceston Town Council on request.

28.4 The Supplier shall immediately notify the Launceston Town Council in writing if it becomes aware of any breach of Clause 28.1 and/or Clause 28.2, or has reason to believe that it has or any of the Supplier's Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

28.5 If the Supplier makes a notification to Launceston Town Council pursuant to Clause 28.4, the Supplier shall respond promptly to the Launceston Town Council's enquiries, co-operate with any investigation, and

allow the Council to audit any books, records and/or any other relevant documentation in accordance with Clause 23.

28.6 If the Supplier is in Default under Clause 28.1 and/or Clause 28.2, Launceston Town Council may by notice:

- (a) require the Supplier to remove from performance of this agreement any Supplier's Personnel whose acts or omissions have caused the Default; or
- (b) immediately terminate this agreement.

28.7 Any notice served by Launceston Town Council under Clause 28.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that Launceston Town Council has elected to take (including, where relevant, the date on which this agreement shall terminate).

29. CONSEQUENCES OF TERMINATION OR EXPIRY

29.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason, the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with Launceston Town Council to ensure an orderly migration of the Services to the Launceston Town Council or, at the Council's request, a Replacement Supplier.

29.2 On termination or expiry of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by Launceston Town Council before such completion) the Supplier shall procure that all data and other material belonging to the Launceston Town Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to Launceston Town Council forthwith and the Supplier Contract Representatives shall certify full compliance with this clause.

29.3 Any provision of this agreement that expressly or by implication is intended to come into or continue force on or after termination or expiry, Clause 17 (Indemnities), Clause 18 (Limitation of Liability), Clause 19 (Insurance), Clause 20 (Freedom of Information), Clause 21 (Data Processing), Clause 22 (Confidentiality), Clause 23 (Audit), Clause 25 (Termination for Breach) and this Clause 29 (Consequences of termination), shall remain in full force and effect.

29.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

GENERAL PROVISIONS

30. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise

of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

31. SEVERABILITY

31.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

31.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

32. PARTNERSHIP OR AGENCY

32.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

32.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

33. PUBLICITY

The Supplier shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use Launceston Town Council's name or logo in any promotion or marketing or announcement of orders, except as required by law, any government or regulatory authority, any court or other Launceston Town Council of competent jurisdiction, without the prior written consent of Launceston Town Council, which shall not be unreasonably withheld or delayed.

34. NOTICES

34.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number or sent by email to the address specified in the tender documentation.

34.2 Any notice shall be deemed to have been received:

(a) if delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or at its principal place of business (in any other case); or

(b) sent by email to the address provided in the tender documentation.

34.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

35. JURISDICTION

35.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

36. ABNORMALLY LOW TENDERS

36.1 If, for a given contract, tenders appear to be abnormally low in relation to the services, works or services, Launceston Town Council shall, before it may reject those tenders, investigate the elements of the tender which it considers to be unsustainable. If the council's investigations determine the bid to be unsustainable, the council may reject the tender from the process.

37. CORPORATE POLICES

37.1 The Supplier shall comply with all Council policies and rules, such as, but not limited to:

- (a) equality and diversity policies;
- (b) sustainability;
- (c) information security rules;
- (d) Safeguarding policies;
- (e) whistleblowing and confidential reporting policies; and all site rules relevant to the fulfilment of the Supplier's obligations

NB: Suppliers are responsible for ensuring they always refer to the most up to date Council policies, which can be found on the council's website <https://launceston-tc.gov.uk/>

38. INDEXATION

38.1 The parties agree that the Supplier may review and adjust the charges set out in this Agreement annually on the anniversary of the Commencement Date if annual increases in the Consumer Prices Index, or any successor index published by the Office for National Statistics or any successor organisation exceed 0.5% over any consecutive twelve month period causing the costs associated with providing the Services incurred by the Supplier to increase, to be by no more than the rate of such annual increase. The Supplier

shall give the Council not less than one month's prior notice in writing of the proposed changes.

39. VARIATIONS

39.1 The relevant Contract Manager may, at any time, by written notice, request the Supplier to make any reasonable alteration to the Contract or any Order pursuant thereto (herein referred to as a 'Variation'). In the event of a Variation being required, the relevant Launceston Town Council Contract Representative shall instruct the Supplier to state in writing its ability to meet the requirements of the Variation and the effect such Variation will have on the cost of the Contract. The Supplier shall respond within fourteen (14) days from receipt of the relevant Contract Manager's instructions or such other period as may be agreed.

39.2 Notwithstanding any data with regard to the value and/or volume of the Service or commissions, whether set out in the Specification or otherwise (which is only given as a guide) Launceston Town Council gives no guarantee and accepts no liability as to the actual values or volumes which will be placed with the Supplier. The Council shall in no circumstances be liable to the Supplier for any consequential or financial loss of any kind whatsoever arising therefrom.

40. KPI's

40.1 Where any Service is stated in Schedule 2 - Specification to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.

40.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined and included within Schedule 2 - Specification.

40.3 The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in Schedule 2 - Specification.

41. MODERN SLAVERY, CHILD LABOUR AND INHUMANE TREATMENT

41.1.1 The supplier shall ensure that all work carried out by its staff or Sub-contractor staff is voluntary and workers shall have the freedom to terminate their employment at any time without penalty, given notice of reasonable length.

41.1.2 The Supplier shall not use, nor allow its Sub-contractors to use forced, bonded or involuntary prison labour.

41.1.3 The supplier shall ensure that its Staff and Sub-contractor Staff shall not be charged any fees or costs for recruitment, directly or indirectly, in whole or in part, including costs associated with travel, processing official documents and work visas in both home and host countries.

41.1.4 The supplier shall not confiscate or withhold staff identity documents or other valuable items, including work permits and travel documentation as a means to force staff employment or to restrict their freedom of movement.

41.1.5 The Supplier warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world and that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world.

41.2 The supplier shall:

41.2.1 make reasonable enquires to ensure that its officers, employees and Sub-contractors have not been convicted of slavery or human trafficking offenses anywhere around the world.

41.2.2 shall have and maintain throughout the term of each Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act and include in its contracts with its Sub-contractors anti-slavery and human trafficking provisions where applicable;

41.2.3 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under a Contract;

41.2.4 shall not use, nor allow its employees or Sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-contractors;

41.2.5 Shall not use the threat of physical abuse, sexual violence, harassment and intimidation against an employee's or sub-contractor's family members, or close associates.

41.2.6 shall not use or allow child or slave labour to be used by its Sub-contractors;

41.2.7 shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-contractors to Launceston Town Council, the Buyer and Modern Slavery Helpline.

Staff payment

41.3 The Supplier shall:

41.3.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment and shall be provided all legally mandated benefits;

41.3.2 ensure that all Supplier Staff are provided with written Information in a language that they understand about their employment conditions in respect of wages, the particulars of their wages for the pay period concerned each time that they are paid, working hours and other working and employment conditions before they enter employment.

41.3.3 Wage payments shall be made at regular intervals and directly to staff, in accordance with national law, and shall not be delayed, deferred, or withheld.

41.3.4 Only deductions, advances, and loans authorised by national law are permitted and shall only be taken with the full consent and understanding of staff.

41.3.5 All staff shall retain full and complete control over their earnings.

41.3.6 not make deductions from staff wages:

(a) as a disciplinary measure

(b) to keep workers tied to the employer or to their jobs

(c) without expressed permission of the worker concerned;

41.3.7 record all disciplinary measures taken against its staff; and

41.3.8 ensure that Supplier Staff are engaged under a recognised employment

relationship established through national law and practice.

Staff hours of Work

41.4 The Supplier shall:

41.4.1 ensure that the working hours of Supplier Staff comply with national laws, and any collective agreements;

41.4.2 that the working hours of Supplier Staff, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing;

41.4.5 All overtime shall be purely voluntary, unless part of a legally recognised collective bargaining agreement.

41.4.6 Supplier staff shall not be required to work overtime under the threat of penalty, dismissal, or denunciation to authorities, a disciplinary measure, or for failure to meet production quotas.

41.4.7 The supplier will ensure that the use of overtime is used responsibly, taking into account:

(a) the extent;

(b) frequency; and

(c) hours worked;

by individuals and by the Supplier Staff as a whole;

41.4.8 The total hours worked in any seven day period shall not exceed 60 hours, working hours may only exceed 60 hours in any seven day period in exceptional circumstances where all of the following criteria are met:

(a) this is allowed by national law;

(b) this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce; appropriate safeguards are taken to protect the workers' health and safety; and

(c) the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

41.4.9 All Supplier Staff shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

Staff Freedom of movement:

41.5.1 The supplier shall ensure that staff's freedom of movement shall not be unreasonably restricted, staff shall not be physically confined to the workplace or any related premises, nor should a mandatory residence in employer-operated facilities be made as a condition of employment

41.5.2 The supplier shall ensure that staff are not subjected to coercive or any other means or behaviour to restrict staffs' freedom of movement or personal freedom.

42. SAFEGUARDING CHILDREN AND ADULTS AT RISK TO HARM

42.1 Launceston Town Council is committed to safeguarding children and adults at risk to harm. If the work undertaken by the tenderer is likely to have any impact on or contact with either of those groups, they should submit an annex at the end of this document giving details, or attach their relevant safeguarding policy.

If safeguarding is not relevant to this project, please delete this section.

- 1 Commencement Date means 18 April 2022
- 2 Contract Period 5 months 12 days
- 3 Launceston Town Council's Contract Representative Ewan Murray.
- 4 Public Liability Insurance cover must be a minimum of £10 million
Employers Liability Insurance cover (except for sole traders) £10 million
Professional Indemnity Insurance cover £1 million
- 5 The Supplier's Contract Representative: [Name].
- 6 Key Personnel [To be inserted at award of contract (as applicable)]
- 7 Commercially Sensitive Information [To be identified by the supplier in Submission and inserted at award of contract]
- 8 ~~Exit Management Plan (N/A) or (See appendix B- Exit Management Plan)~~
9. ~~GDPR Schedule (N/A) or (See appendix A- GDPR)~~
~~(buyer the GDPR & Exit Management appendices can be found in the 'templates and documents page' of the procurement toolkit)~~
Please attach your GDPR policy, procedures or statement of intent

7 - SUPPORTING INFORMATION

ct name and ref)

Note – You may adjust the size of the following text boxes to suit your response.

SECTION A Company Details

A-1 Company Name &
Registered office

A-2 Registration Number

A-3 No. of Employees

A-4 If the Company is a member of a group of companies; give the name and address of the ultimate holding Company.

SECTION B Experience of the Company

B-1 Please provide details of your company's previous experience in delivering the type of services required under this contract.

Response to be no more than 2 sides of A4 font size Arial 12, please label your response as B-1

SECTION C References

C-1 Please provide details of two contracts that your organisation has held that are **relevant** to the Launceston Town Council's requirements as stated in the specification.

Please include:

- Customer organisation
- Customer contact name
- Customer e-mail address and phone number
- The date of contract award and finish
- Contract Value
- The names of any subcontractors/consortium members utilised.
- Brief Contract description (no more than 100 words per contract description)

Please label your response as C.1 & C.2.

SECTION D Proposed Working Methods

Please provide responses to the following statements which are designed to assess your planned approach to delivering the contract.

Response to be no more than 3 sides of A4 font size Arial 12, please label your response as D-1

How will you ensure:

1. Compliance with the specification
2. Quality of processes
3. Good customer service and reporting
4. Appropriate method of achieving contract outputs
5. On-going sustainability benefits

What do you consider to be the three main challenges in delivering the required services?

SECTION E Environmental Responsibility

Launceston Town Council has made a commitment to reduce its environmental impact and carbon emissions. Additionally, the council has signed up to the Cornwall Council Climate Emergency Agenda and favourably judge businesses with similar commitment.

E-1 - Please indicate the measures you employ to minimise your organisations carbon footprint and environmental impact, and enhance environmental and social benefits and how these practices will be applied to the delivery of this contract. Please indicate the actions in reference to the following areas as appropriate to your submission.

Response to be no more than 4 sides of A4 font size Arial 12, please label your response as E-1

- | | |
|-----------------------------|------------------------------|
| • Community Engagement | • Waste & Recycling |
| • Energy & Water Management | • Design & Manufacturing |
| • Local Purchasing | • Biodiversity & Open Spaces |
| • Transport & Air Quality | |

Section F - Safeguarding (* if relevant)

F-1 Please provide details of how your organisation meets its safeguarding responsibilities, ensuring that the following areas are covered within your response:

- How your organisation complies with relevant safeguarding legislation
- Staff awareness of responsibilities to report concerns through supervision/training/induction materials.
- Your organisation procedural checks for staff who are engaged in works where there are safeguarding considerations
- Your organisation's identified individual to whom safeguarding concerns may reported.
- Your organisations complaints and disciplinary procedures to manage concerns about staff behaviour.

Response to be no more than 1 side of A4 font size Arial 12, please label your response as F-1

Tenderers should delete this section if not relevant to this contract

8 – PAYMENT DETAILS

(contract name and ref)

The Council's standard payment terms are 30 days from receipt of invoice following completion of the required services.

Payment is by BACS.

It is the policy of the Council to make payments to all suppliers direct into their bank account using the Bankers Automated Clearing Systems (BACS). Please complete your bank and relevant company details below. If your sales are factored to an Agency, please enclose a copy of the authorisation to make payment directly to them. The bank details will then be those of the factor and not yours.

Bank Name _____ Account Name _____

Bank Address _____ Sort Code

_____ Account No.

_____ Postcode _____

No invoices will be accepted from any Contractor without an official written order from the Council and the order number in full being quoted on all invoices.

IMPORTANT

All invoices for Launceston Town Council should be addressed to:

The Responsible Finance Officer
Launceston Town Council
Western Road Road
Launceston
Cornwall
PL15 7AR

And emailed directly to helen@launceston-tc.gov.uk failure to do so may lead to a delay in payment.

9 – Declaration

name and ref)

I DECLARE THAT TO THE BEST OF MY KNOWLEDGE THE ANSWERS SUBMITTED IN THE BUSINESS QUESTIONNAIRE AND IN THE LEGAL OBLIGATIONS SCHEDULES (AND ANY SUPPORTING MODULES) ARE CORRECT. I UNDERSTAND THAT THE INFORMATION WILL BE USED IN THE EVALUATION PROCESS TO ASSESS MY ORGANISATION'S SUITABILITY TO TENDER FOR LAUNCESTON TOWN COUNCIL'S REQUIREMENT. SHOULD THE COUNCIL DISCOVER ANY DISCREPANCIES OR THAT I HAVE BEEN DISHONEST WITH THE ANSWERS THIS WILL RESULT IN THE ORGANISATION TO WHICH I HAVE COMPLETED THIS QUOTATION FOR, BEING REJECTED FROM THE TENDER PROCESS OR IF AWARDED A CONTRACT WILL HAVE THE CONTRACT TERMINATED WITH IMMEDIATE EFFECT AND NO COST INCURRED TO THE COUNCIL. **SIGNATURE IS MANDATORY, FAILURE TO DO SO WILL RESULT IN YOUR BID BEING DEEMED NON COMPLIANT WHICH WILL RESULT IN YOUR BID BEING DISQUALIFIED FROM THIS TENDERING PROCESS.**

1.	Name:
2.	Position (Job Title):
3.	Date:
4.	Telephone number:
5.	Signature:

10 – CONTRACT CONDITIONS ACCEPTANCE

Contract name and ref)

Contract for Provision of **Launceston – Safer Greener Streets**

To Launceston Town Council

I/we the undersigned DO HEREBY UNDERTAKE to provide the Service upon and subject to the terms and conditions set out in such Conditions of Contract, Specification, and the pricing and rates contained in the pricing schedule and other documents as are contained or incorporated herein.

Signature
Duly authorised agent of the Supplier

Position held

Name and Address
of Supplier
.....
.....

Dated

It must be clearly shown whether the Supplier is a Limited Company, Corporation, Partnership, or Single Individual, trading in his own or another name, and also if the person signing is not the actual tenderer, the capacity in which he signs or is employed.

11 – ARTICLES OF AGREEMENT

act name and ref)

This CONTRACT is made the of

Between Launceston Town Council of the one part and [Insert your company name here] of the other part

WHEREAS

1. The Council wishes to have provided the Service set out in the Contract and has appointed the Supplier for the supplying of this Service; and
2. The Supplier is willing to provide such Service/s in accordance with the provisions of the Contract.

NOW IT IS AGREED between the Council and the Supplier as follows:

1. The Contract constitutes the sole agreement between the Council and the Supplier for the provision of Services;
2. The Supplier shall provide the Service/s in accordance with the provisions of the Contract and to the satisfaction of the Council for the Contract Period.

IN WITNESS WHERE OF the parties here to

SIGNED for and on behalf of the
Council

Print Name and Address

SIGNED for and on behalf of the
Council

Print Name and Address

In the presence of - Signature:
(Council Officer)

Print Name and Address

SIGNED for and on behalf of the
Supplier

Print Name and Address

In the presence of – Signature
(Supplier Officer):

Print Name and Address

12 - Certificate of Non-collusion and Non-canvassing

(act name and ref)

Certificate of Non-collusion and Non-canvassing

Launceston safer Greener Streets

To: Launceston Town Council

Date:

For the attention of: Christopher Drake – Town Clerk

Note to Organisation: As a public body it is important that the Council receives genuine competitive offers from Tenderers, and that all Tenderers act in a manner that is honest and reflects best practices. Tenderers are therefore required to sign this document to certify that they have not and will not undertake any acts of canvassing or collusion.

Statement of Non-canvassing

I/We certify the following.

I/we hereby certify that I/we have not canvassed any member, director, employee or adviser of the Council in connection with this Tender and the proposed award of the Contract by the Council and that no person employed by me/us or acting on my/our behalf, or advising me/us, has done any such act.

I/we further hereby undertake that I/we will not canvass any member, director, employee or adviser of the Council in connection with this Tender and the proposed award of the Contract and that no person employed by me/us or acting on my behalf, or advising me/us, will do any such act. I/we agree that the Council may, in consideration of this bid, and in any subsequent actions, rely upon the statements made in this Certificate.

Statement of Non-collusion

The essence of the public procurement process for selective tendering for the Contract is that the Council shall receive bona fide competitive Tenders from all Tenderers.

In recognition of this principle, I/we hereby certify that this is a bona fide offer, intended to be competitive, and that I/we have not fixed or adjusted the amount of the offer or the price in accordance with any agreement or arrangement with any person (except any sub-contractor identified in this offer).

I/we also certify that I/we have not done, and undertake that I/we will not do, at any time during the tender process or in the event of my/our Tender being successful while the resulting Contract is in force, any of the following acts:

- 1 enter into any agreement or agreements with any other person that they shall refrain from tendering to the Council or as to the amount of any offer submitted by them; or
- 2 inform any person, other than the Council of the details of the Tender or the amount or the approximate amount of my/our offer except where the disclosure was in confidence and was essential to obtain insurance premium quotations required for the preparation of the Tender; or
- 3 cause or induce any person to enter into such an agreement as is mentioned in paragraph 1 and 2 above or to inform us of the amount or the approximate amount of any rival Tender for the Contract; or
- 4 commit any offence under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts 1889 to 1916 nor under Section 117 of the Local Government Act 1972; or
- 5 offer or agree to pay or give or actually pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having

caused to be done in relation to any other Tender or proposed Tender for the performance of the Project covered by the Tender any act or omission.

In this Certificate, the word 'person' includes any person, body or association, corporate or incorporate and 'agreement' includes any arrangement whether formal or informal and whether legally binding or not.

I/we agree that the Council may, in its consideration of the offer, and in any subsequent actions, rely upon the statements made in this certificate.

Signed _____

Name _____

Position _____

For and on behalf of [Insert your company name here]_____

13 – SUPPLIER’S CONTACT INFORMATION

ct name and ref)

Name of person to whom any
Queries relating to this quotation
Should be addressed

Telephone/Mobile

Email

Address
(Only if different from the
Registered Office address stated
in Schedule 7)

Blank

RFQ for service --- (Tenderer - delete this heading and insert contract name and ref)