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| <p>1. INTERPRETATION</p> <p>1.1 Definitions. In this Contract, the following definitions apply:
 Ariba Network: a hosted service that enables suppliers and buyers to form relationships and conduct transactions over the internet;
 Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;
 Commencement Date: has the meaning set out in clause 2.2;
 Contract: these terms and conditions agreed between the Customer and the Supplier for the supply of Goods and/or Services;,
 Customer: Yorkshire Water Services Limited registered in England and Wales with company number 002366682;
 Customer Materials: defined in clause 5.3(i);
 Deliverables: all documents, products and materials developed by the Supplier as part of or in relation to the Services;
 Goods: the goods (or any part of them) set out in the Order;
 Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
 Order: the Customer's order for the supply of Goods and/or Services;
 Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Order;
 Supplier: the person or firm from whom the Customer purchases the Goods and/or Services
 Qualifying Company: a company who supply employee/s who carry out services for two or more hours of work in any given day in a week, for eight or more consecutive weeks in a year on the Customer's sites
 Living Wage: the hourly rate of pay published by the Living Wage Foundation and/or the Citizens UK Charity;.</p> <p>1.2 Construction. In this Contract, the following rules apply:
 (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 (b) a reference to a party includes its successors or permitted assigns;
 (c) a reference to a statute or statutory provision is a reference to such as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 (d) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 (e) a reference to writing or written includes faxes and e-mails.</p> <p>2. BASIS OF CONTRACT</p> <p>2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with this Contract.</p> <p>2.2 The Order shall be deemed to be accepted on the earlier of:
 (a) the Supplier issuing written acceptance of the Order; or
 (b) any act by the Supplier consistent with fulfilling the Order, on which date the Contract shall come into existence (Commencement Date).</p> | <p>2.3 This Contract applies to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.</p> <p>3. SUPPLY OF GOODS</p> <p>3.1 The Supplier shall ensure that the Goods:
 (a) correspond with their description and any applicable specification;
 (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
 (c) where applicable, be free from defects in design, materials and workmanship and remain so for at least 12 months after delivery; and
 (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.</p> <p>3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.</p> <p>3.3 The Customer shall have the right to inspect and test the Goods at any time before and for a reasonable time after Delivery.</p> <p>3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.</p> <p>3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.</p> <p>4. DELIVERY OF GOODS</p> <p>4.1 The Supplier shall ensure that:
 (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.</p> <p>4.2 The Supplier shall deliver the Goods:
 (a) on the date specified in the Order or, if no such date is specified, then the date agreed in writing between the Supplier and the Customer. Time of delivery shall always be of the essence;
 (b) to the Customer's premises at such location as is set out in the Order or as instructed by the Customer before delivery (Delivery Location);
 (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.</p> <p>4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location (Delivery).</p> <p>4.4 The Supplier shall provide such programmes of manufacture, product lead time and delivery as the Customer may reasonably require and the Supplier shall give notice to the Customer as soon as practicable if such programmes are or are likely to be delayed. Agreed delivery dates and schedules must be adhered to.</p> <p>4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent.</p> <p>4.6 Title and risk in the Goods shall pass to the Customer on Delivery.</p> |
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5. SUPPLY OF SERVICES

- 5.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.
- 5.3 In providing the Services, the Supplier shall:
 - (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
 - (b) perform the Services with the best care, skill and diligence in accordance with the standard of skill, care and diligence reasonably to be expected of a qualified and competent member of the Supplier's industry;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
 - (d) ensure that the Services and Deliverables will conform with any relevant specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
 - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
 - (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations in relation to the Services;
 - (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
 - (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and
 - (j) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services.

6. CUSTOMER REMEDIES

- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
 - (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
 - (c) where the Customer has paid in advance for Services that have not been provided and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - (d) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure.
 - (e) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - (f) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

- (g) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (h) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
- 6.2 This Contract shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.3 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

7. CUSTOMER'S OBLIGATIONS

- 7.1 The Customer shall for the purpose of the Supplier providing the Goods and/or Services :
 - (a) provide reasonable access at reasonable times to the Customer's premises; and
 - (b) provide such information as may reasonably be requested and the Customer considers reasonably necessary.

8. MODERN SLAVERY ACT

- 8.1 Both Parties shall comply with their obligations under the Modern Slavery Act 2015 at all times during the Contract.
- 8.2 On written request, the Supplier shall provide to the Customer written confirmation, on the Supplier's letter headed paper, of the Supplier's compliance with the Modern Slavery Act. Such requests from the Customer shall be no more than annually.
- 8.3 The Customer reserves the right, on reasonable notice, to audit the Supplier in relation to this clause.

9. LIVING WAGE

- 9.1 The Supplier acknowledges and agrees that it is a Qualifying Company or that during the Term it may become a Qualifying Company.
- 9.2 It is a condition of this Contract that, if the Supplier is a Qualifying Company:
 - (a) the Supplier shall pay all employees who are employed by the Supplier to perform Services pursuant to this Contract not less than the Living Wage; and
 - (b) notwithstanding (a), the Supplier has up to 6 months from the date of any increase in the Living Wage to increase any or all wages such that the Supplier's employees continue to be paid not less than the Living Wage.
- 9.3 In accordance with clause 16.2, if the Supplier sub-contracts all or part of the provision of the Services to a Sub-Contractor the Supplier shall ensure that any Sub-Contractor complies with the provisions of this clause as though that Sub-Contractor were itself the Supplier.

10. CHARGES AND PAYMENT

- 10.1 The price for the Goods:
 - (a) shall be the price set out in the Order; and
 - (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Customer. No extra charges shall be effective unless agreed in writing and signed by the Customer.
- 10.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 10.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 10.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 42 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 10.5 If the Customer fails to make any payment due to the Contractor under this agreement by the due date for payment, then, the Supplier shall be entitled to claim, in addition to the

- overdue amount, interest on the overdue amount at a rate of 4% per annum above the base rate of Lloyds Bank plc from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.
- 10.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 10.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 10.8 The Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Customer to the Supplier under the Contract.
- 10.9 If the Customer, acting in good faith, disputes the Charges set out in any invoice issued by the Contractor, then the Customer shall be entitled to withhold the disputed element of the Charges, provided that the Customer gives the Supplier written notice of the amounts to be withheld together with the reasons for withholding such amounts, within 10 days of the date of receipt of the invoice. The Parties shall each act in good faith and use reasonable endeavours to promptly resolve such dispute.
- 10.10 An invoice generated via the Ariba Network will be the tax document used for both the Customer and the Supplier to enable each to pay and recover VAT. A Supplier shall be responsible for ensuring the correct VAT treatment is applied on the invoice generated via the Ariba Network. Ariba Network generated invoices will be the document of record for the transaction(s) from a HMRC perspective.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- 11.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- 11.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including the Deliverables.
- 11.3 The Supplier shall obtain waivers of all moral rights in the products, including the Deliverables, of the Services to which any individual is now or may be at any future time entitled.
- 11.4 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 11.2.
- 11.5 All Customer Materials are the exclusive property of the Customer.
- 12. INDEMNITY**
- 12.1 The Supplier shall have liability and indemnify the Customer for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Supplier, of the terms of this Contract, including any negligent or reckless act, omission or default in the provision of the Goods and/or Services.
- 12.2 For the duration of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance in amounts no less than £5,000,000 (two million pounds) to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 12.3 This clause 12 shall survive termination of the Contract.
- 13. CONFIDENTIALITY**
- 13.1 A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 13 shall survive termination of the Contract.
- 14. TERMINATION**
- 14.1 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect (other than in respect of any properly incurred charges at the date of termination) by giving 1 month's written notice to the Supplier.
- 14.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract, by giving the Customer 3 months' written notice.
- 14.3 In any of the circumstances in this Contract in which the Customer may terminate the Contract, where both Goods and Services are supplied, the Customer may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- 15. CONSEQUENCES OF TERMINATION**
- 15.1 On termination of the Contract or any part of it for any reason: (a) where the Services are terminated, the Supplier shall immediately deliver to the Customer all Deliverables, whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 16. GENERAL**
- 16.1 **Force majeure:** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Goods and/or Services for more than 2 weeks, the Customer shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

16.2 **Assignment and subcontracting:**

- (a) The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.

16.3 **Notices:**

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

16.4 **Waiver and cumulative remedies:**

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

16.5 **Severance:**

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

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

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

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