Agreement for the purchase of Electronic Padlocks and IT services

Bournemouth Christchurch and Poole Council

and

[Insert Company]

for the provision of Electronic Padlocks

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This agreement is dated

PARTIES

(1) Bournemouth Christchurch and Poole Council whose registered office is at the Town Hall, Bourne Avenue, Bournemouth, BH2 6DY **("BCP")**

and

(2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(**the **"Supplier")**

each a Party and together the Parties

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Confidential Information: the Deliverables; all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and which have been disclosed to the Supplier by BCP or its agents, or which are otherwise made available to the Supplier in connection with this agreement.
BCP's Project Manager: BCP's manager for the Project appointed in accordance with Clause 3(a).
BCP's Responsibilities: BCP's obligations set out in Clause 3.
Cybersecurity Requirements: any and all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions applicable to either party and relating to security of network and information systems and security breach and incident reporting requirements, including all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), the Cybersecurity Directive (EU) 2016/1148), Commission Implementing Regulation (EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.
Deliverables: all products and materials developed by the Supplier in relation to the Project in any media, including without limitation computer programs, data, diagrams, reports and specifications (including drafts).
Delivery: completion of delivery of Products to an address specified in the Authority's Order.

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Good Industry Practice: in relation to the performance of any of the Services, their performance to the standard of skill, care, prudence and foresight, in each case with appropriate management and control of quality, that a leading professional supplier of services similar to the Services would use in the performance of those services.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in 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, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, 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.

Known Vulnerabilities: any Vulnerability that has either: been assigned a Common Vulnerabilities and Exposures (CVE) number; been disclosed on the National Vulnerability Database available at the website operated by the US National Institute of Standards and Technology (NITST) from to time to time; or been disclosed on the internet or and [open] public database such that it would be revealed by reasonable searches conducted in accordance with Good Industry Practice.

Latent Vulnerabilities: any instances of typical classes of Vulnerability. For example, buffer overflows, cross-site scripting (XSS) and Structure Query Language (SQL) injection.

Man Day: a day of not less than eight hours spent working on the Project.

Mandatory Policies: the Company's business policies and codes attached in the Schedule, as amended by notification to the Supplier from time to time.

Mitigate: the taking of such reasonable steps that would be taken by a prudent supplier in accordance with Good Industry Practice to mitigate against the Virus or Vulnerability in question, which may include (in the case of a Vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety), provided these are approved by BCP in writing in advance, and the terms Mitigated and Mitigation shall be construed accordingly.

Products: Locks and Keys as identified in the Project Specification in Annex B.

Project: the project, as described in the Project Plan.:

Project Plan: the detailed plan describing the Project and setting out the timetable (including Project Milestones) and responsibilities for the provision of the Services by the Supplier in accordance with the Project Specification, attached to this agreement as Annex AOR to be agreed with and delivered to BCP and, on such agreement, to be attached to this agreement as Annex A and form part of it.

Project Milestone: a date by which a part of the Project shall be completed, as specified in the Project Plan.

Project Specification: the specification for the Project, attached to this agreement as Annex B.

Proposal: the materials handed to BCP supporting the Supplier's presentation to BCP and describing how the Supplier proposes to carry out the Project.

Services: the consulting and related services to be supplied, and obligations to be performed, by the Supplier in connection with the Project.

Supplier's Project Manager: the Supplier's manager for the Project appointed in accordance

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with Clause 2.4
Supplier's Project Team: has the meaning given in Clause 2.5.
VAT: value added tax chargeable under English law for the time being and any similar tax.
Virus: anything or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.
Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

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

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

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

1.7 A reference to a statute or statutory provision is a reference to it as replaced, extended or re-enacted from time to time and includes primary and delegated legislation and any provision of EU law having direct effect or direct applicability in the UK.

1.8 A reference to writing or written includes faxes and email.

1.9 References to clauses and Annexes are to the clauses of and Annexes to this agreement and references to paragraphs are to paragraphs of the relevant Annex. The Annexes form part of this agreement.

1.10 This agreement shall be deemed to have commenced on [DATE] (Commencement Date).

2. SUPPLIER'S RESPONSIBILITIES

2.1 The Supplier shall manufacture, pack and supply the Products in the Project Specification in accordance with all generally accepted industry standards and practices that are applicable.

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2.2 The Supplier warrants the Products supplied to the Authority by the Supplier under this agreement shall:

(a) conform to the Project Specification;
(b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Authority;
(c) be free from defects in design, material and workmanship and remain so for a minimum of 48 months after Delivery; and
(d) comply with all applicable statutory and regulatory requirements.

2.3 The Supplier shall ensure that the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition.

2.4 The Supplier shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to supply the Products in accordance with the terms of this agreement.

2.5 The Supplier shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Products.

Delivery

2.6 The Supplier shall deliver the Products specified in each Order to the Delivery Location by the Delivery Date. The Supplier shall not deliver an Order more than five Business Days in advance of the Delivery Date without the prior written consent of the Authority.

2.7 Delivery of an Order shall be complete on the completion of unloading of the Order at the Delivery Location.

2.8 The Supplier may deliver Orders by instalments, which may be invoiced and paid for separately. Where Orders are to be delivered by instalments, they may be invoiced and paid for separately. References in this agreement to Orders shall, where applicable, be read as references to instalments.

2.9 If an Order is not delivered on the specified Delivery Date, then, without limiting any other right or remedy the Authority may have, the Authority may:

(a) refuse to take any subsequent attempted delivery of the Order;
(b) terminate this agreement with immediate effect;
(c) obtain substitute products from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the Authority in obtaining such substitute products. Substitute products obtained from a third party supplier; and

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(d) claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Authority's failure to comply with its obligations under this agreement.

2.10 Each delivery of Products shall be accompanied by a delivery note from the Supplier showing the Order Number, the date of the Order, the type and quantity of Products included in the Order and, in the case of Products being delivered by instalments, the outstanding balance of Products specified in an Order remaining to be delivered.

2.11 If the Supplier requires the Authority to return any packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the relevant Order, and any such returns shall be at the Supplier's expense.

2.12 The Authority shall not be deemed to have accepted any Products until it has had a reasonable time to inspect them following Delivery, or, in the case of a latent defect in the Products, until a reasonable time after the latent defect has become apparent.

2.13 If any Products delivered to the Authority do not comply with Clause 2.2, or are otherwise not in conformity with the terms of this agreement, then, without limiting any other right or remedy that the Authority may have, the Authority may reject those Products and:

(a) require the Supplier to repair or replace the rejected Products at the Supplier's risk and expense within five Business Days of being requested to do so; or
(b) require the Supplier to repay the price of the rejected Products in full (whether or not the Authority has previously required the Supplier to repair or replace the rejected Products); and
(c) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Products that do not conform with the terms of this agreement.

2.14 The Authority's rights and remedies under this Clause 2 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this agreement by the Sale of Goods Act 1979.

2.15 The terms of this agreement shall apply to any repaired or replacement Products supplied by the Supplier.

2.16 If the Supplier fails to promptly repair or replace rejected Products in accordance with this Clause 2, the Authority may, without affecting its rights, obtain substitute products from a third party supplier, or have the rejected Products repaired by a third party, and the Supplier shall reimburse the Authority for the costs it incurs in doing so.

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TITLE AND RISK

2.17 The risk in Products delivered to the Authority shall pass to the Authority on Delivery.

2.18 Title to Products delivered to the Authority shall pass to the Authority on Delivery.

SERVICES

2.6 If the Project Specification and Project Plan are not attached to this agreement when it is made:

(a) the Supplier shall diligently prepare the Project Specification and/or the Project Plan (as the case may be) and, within the time stipulated by BCP, deliver the same to BCP for approval;

(b) if BCP approves the documents delivered under Clause 2.1(a), the Supplier shall proceed with the rest of the Project at BCP's direction, but such approval shall not affect BCP in enforcing any other term of this agreement;

(c) if BCP does not approve any documents under Clause 2.1(a), it shall notify the Supplier to that effect within [NUMBER] of days after delivery (or the due date for delivery in the case of non-delivery), stating in reasonable detail the reason(s) for non-approval; and

(d) on receipt of notice under Clause 2.1(c), the Supplier shall (without affecting any other rights or remedies of BCP) promptly, and at its own cost, carry out all remedial work necessary to enable BCP to give such approval.

2.2 The Supplier shall manage and complete the Project, and deliver the Deliverables, in accordance with the Project Plan. Without affecting the foregoing, the Supplier shall allocate sufficient resources to the Project to enable it to comply with this obligation.

2.3 Time is of the essence as to the performance of the Services. If the Supplier fails (in any case where Clause 2.1 applies) to deliver the Project Specification and the Project Plan within the time stipulated for their delivery or to meet any performance dates specified in the Project Plan, BCP shall be entitled to:

(a) cancel this agreement in whole or in part without liability to the Supplier;

(b) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

(c) purchase substitute services elsewhere;

(d) hold the Supplier accountable for any loss and additional costs incurred; and

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(e) have refunded by the Supplier all sums previously paid by BCP to the Supplier under this agreement.

2.4 The Supplier shall co-operate with BCP in all matters relating to the Project and appoint a Project Manager, who shall have authority to commit the Supplier on all matters relating to the Project.

2.5 BCP may for any reason decline to accept any persons (including replacements) proposed by the Supplier to work on the Project (together referred to as the Supplier's Project Team), and in such event the Supplier shall propose a replacement without delay. The Supplier shall ensure the continued availability of each member of the Supplier's Project Team during the Project. The Supplier shall promptly notify BCP if any member of the Supplier's Project Team is unable to work due to illness.

2.6 If the Supplier wishes to replace a member of the Supplier's Project Team, it shall seek the prior written approval of BCP, such approval not to be unreasonably withheld or delayed. If at any time BCP considers that any member of the Supplier's Project Team is not suitable for the purpose of this agreement, BCP may require the Supplier to replace that person with a suitable alternative without delay.

2.7 The Supplier acknowledges and agrees that:

(a) BCP is entering into this agreement on the basis of the Proposal and that the Proposal is accurate and complete in all material respects, and is not misleading; and

(b) if it considers that BCP is not or may not be complying with any of BCP's Responsibilities, it shall only be entitled to rely on this as relieving performance:

(i) to the extent that it restricts or precludes performance of the Services by the Supplier; and

(ii) if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details to BCP in writing.

3. BCP'S RESPONSIBILITIES

3.1 BCP shall:

(a) co-operate with the Supplier in all matters relating to the Project and appoint a Project Manager, who shall have the authority to commit BCP on all matters relating to the Project;

(b) provide such access to BCP's premises and data, and such office accommodation and other facilities, as may reasonably be required by the Supplier and agreed by BCP in

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advance for the purposes of the Project; and

(c) provide, in a timely manner, such information as the Supplier may request, and BCP considers reasonably necessary, in order to carry out the Project and ensure that all information BCP provides is accurate in all material respects.

4. CHANGE CONTROL

4.1 BCP's Project Manager and the Supplier's Project Manager shall meet at least once every quarter to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other party in writing.

4.2 If BCP requests a change to the scope of the Services:

(a) the Supplier shall, within a reasonable time (and in any event not more than five working days after receipt of BCP's request), but without further charge to BCP, provide a written estimate to BCP of:

(i) the likely time required to implement the change;

(ii) any necessary variations to the Supplier's charges as a result of the change;

(iii) the likely effect of the change on the Project Plan; and

(iv) any other impact of the change on the terms of this agreement;

(b) if BCP does not wish to proceed, there shall be no change to the Project Plan or this agreement; and

(c) if BCP wishes the Supplier to proceed with the change, the Supplier shall do so after agreement on the necessary variations to its charges, the Project Plan and any other relevant terms of this agreement to take account of the change.

4.3 If the Supplier requests a change to the scope of the Services, BCP shall not unreasonably withhold or delay consent to it. If BCP wishes the Supplier to proceed with the change, the Supplier shall do so. Unless the Supplier's request was attributable to BCP's non-compliance with BCP's Responsibilities, neither the Supplier's charges, the Project Plan nor any other terms of this agreement shall vary as a result of such change.

5. CHARGES AND PAYMENT

5.1 Clause 5.2 shall apply if the Services are to be provided on a time-and-materials basis. Clause 5.3 shall apply if the Services are to be provided for a fixed price. The remainder of this Clause 5 shall apply in either case.

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5.2 Where the Services are provided on a time-and-materials basis:

(a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates in force for the Supplier's Project Team involved in the supply of the Services, details of which are set out in the Proposal;

(b) the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);

(c) the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's Project Team unless it has BCP's prior written consent to do so;

(d) the Supplier shall ensure that the members of the Supplier's Project Team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in Clause 5.2(e); and

(e) the Supplier shall invoice BCP monthly in arrear for its charges for time, expenses and materials (together with VAT, where appropriate) for the month concerned, calculated as provided in this Clause 5. Each invoice shall set out the time spent by each member of the Supplier's Project Team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

5.3 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Proposal. The total price shall be paid to the Supplier in instalments as set out in the Project Plan, with the payment of each instalment being conditional on the Supplier having achieved the appropriate Project Milestone as set out in the Project Plan. On achieving a Project Milestone, the Supplier shall invoice BCP for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in this Clause 5.

5.4 The Supplier's charges exclude:

(a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably and properly incurred by members of the Supplier's Project Team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost price. The Supplier shall obtain BCP's approval before incurring any such expense, material or service exceeding [AMOUNT]; and

(b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

5.5 BCP shall pay each invoice properly due, issued and submitted by Supplier within 30 days

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of receipt.

5.6 Claims for payment in respect of materials purchased by or services provided to the Supplier, or for reimbursement of expenses, shall be payable by BCP only if agreed by BCP in writing in advance and accompanied by relevant receipts.

5.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as BCP shall approve. The Supplier shall allow BCP to inspect such records at all reasonable times on request.

5.8 Without prejudice to any other right or remedy it may have, BCP reserves the right to set off any amount owing at any time to it by the Supplier against any amount payable by BCP to the Supplier under this agreement.

6. QUALITY OF SERVICES

6.1 The Supplier warrants to BCP that:

(a) the Supplier will perform the Services in accordance with Good Industry Practice;

(b) the Services will conform with all descriptions and specifications provided to BCP by the Supplier, including the Project Specification and Project Plan;

(c) the Services will be provided in accordance and the Supplier will comply with all applicable legislation from time to time in force, [including the Cybersecurity Requirements], and the Mandatory Policies;

(d) [it will not introduce any Vulnerabilities or Viruses into the Deliverables, or the network and information systems of BCP, whether via the provision of the Services or otherwise; and]

(e) [all Deliverables will be tested for Viruses and [Known Vulnerabilities and Latent] Vulnerabilities prior to their delivery to BCP, and the Supplier will promptly Mitigate against any Vulnerabilities or Viruses present in any Deliverables which it detects, or should have detected, or which are notified to it.]

6.2 BCP's rights under this agreement are in addition to the statutory terms implied in favour of BCP by the Supply of Goods and Services Act 1982 and any other statute.

6.3 The provisions of this Clause 6 shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Supplier.

7. INTELLECTUAL PROPERTY RIGHTS

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7.1 The Supplier hereby assigns to BCP, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).

7.2 The Supplier shall, promptly at BCP's request, do or procure to be done all such further acts and things and the execution of all such other documents as BCP may from time to time require for the purpose of securing for BCP the full benefit of this agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to BCP in accordance with Clause 7.1 or Clause 11.4.

8. INDEMNITY

8.1 The Supplier shall indemnify and hold BCP harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, BCP as a result of or in connection with:

(a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables); or

(b) any claim made against BCP in respect of any liability, loss, damage, injury, cost or expense sustained by BCP's employees or agents or by any BCP or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this agreement by the Supplier;[or]

(c) [any breach by the Supplier of its obligations under this agreement, which causes BCP to breach any Cybersecurity Requirements.]

8.2 During the term of this agreement, the Supplier shall maintain in force with a reputable insurance company professional indemnity insurance in an amount not less than £[AMOUNT] and shall, on BCP's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

9. CONFIDENTIALITY AND BCP'S PROPERTY

9.1 The Supplier may be given access to Confidential Information from BCP in order to perform its obligations under this agreement. Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the Supplier;

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(b) (save in respect of the Deliverables) was in the Supplier's lawful possession before the relevant disclosure or access was provided by BCP or its agents; or

(c) is lawfully disclosed to the Supplier by a third party without restriction on disclosure.

9.2 Subject to Clause 9.4, the Supplier shall hold the Confidential Information in confidence and not make the Confidential Information available to any third party, or use the Confidential Information for any purpose other than the implementation of this agreement.

9.3 The Supplier shall take all reasonable steps to ensure that the Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

9.4 The Supplier may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives BCP as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 9.4, it takes into account the reasonable requests of BCP in relation to the content of such disclosure.

9.5 All materials, equipment, tools, copyright, rights in designs and any other Intellectual Property Rights in all drawings, specifications and data supplied by BCP to the Supplier shall at all times be and remain the exclusive property of BCP, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to BCP, and shall not be disposed of or used other than in accordance with BCP's written instructions or authorisation.

9.6 This Clause 9 shall survive termination of this agreement for any reason.

10. LIMITATION OF LIABILITY

10.1 The following provisions set out the entire financial liability of either party (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the other in respect of:

(a) any breach of this agreement howsoever arising;

(b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the agreement.

10.2 Nothing in this agreement excludes the either party's liability:

(a) for death or personal injury caused by that party's negligence; or

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(b) for fraud or fraudulent misrepresentation.

11. TERMINATION

11.1 Without prejudice to any other rights or remedies to which BCP may be entitled, BCP may terminate this agreement without liability to the Supplier if:

(a) the performance of the Services is delayed, hindered or prevented by circumstances beyond the Supplier's reasonable control; or

(b) the other party commits a material breach of any [other] term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [NUMBER] days after being notified [in writing] to do so;

(c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

(d) the other party 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];

(e) the other party 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 that other party with one or more other companies or the solvent reconstruction of that other party];

(f) 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 that other party (being a company) [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];

(g) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

(h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

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(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) [the other party (being an individual) is the subject of a bankruptcy petition or order;]

(k) a creditor or encumbrancer of the other party 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;

(l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 11.1(e) to Clause 11.1(l) (inclusive);

(m) [any warranty given by the other party in clause [NUMBER] of this agreement is found to be untrue or misleading.]

11.2 Without affecting any other right or remedy available to it, the Company may terminate this agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of its obligation in Clause 11.3.

11.3 On termination of this agreement for any reason, the Supplier shall immediately deliver to BCP all copies of information or data provided by BCP to the Supplier for the purposes of the agreement. The Supplier shall certify to BCP that it has not retained any copies of such information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in Clause 9.

11.4 On termination of this agreement by BCP, the Supplier shall immediately deliver to BCP all specifications, programs (including source code) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to and vest in BCP (to the extent that they have not already done so by virtue of Clause 7.1), who shall be entitled to enter the premises of the Supplier to take possession of them.

11.5 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination [or expiry] of this agreement shall remain in full force and effect.

12. REMEDIES

12.1 If any Services are not supplied in accordance with, or the Supplier fails to comply with, any terms of this agreement, BCP shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

(a) to rescind this agreement; or

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(b) to refuse to accept the provision of any further Services by the Supplier and to require the immediate repayment by the Supplier of all sums previously paid by BCP to the Supplier under this agreement; or

(c) to require the Supplier, without charge to BCP, to carry out such additional work as is necessary to correct the Supplier's failure,

and in any case to claim such damages as it may have sustained in connection with the Supplier's breach or breaches of this agreement not otherwise covered by the foregoing provisions of this Clause 12.

13. ANTI-BRIBERY

13.1 The Supplier shall:

(a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);

(b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) comply with BCP's Ethics, Anti-bribery and Anti-corruption Policies (annexed to this agreement at Annex [INSERT]) and [RELEVANT INDUSTRY CODE ON ANTI-BRIBERY]] [annexed to this agreement at Annex [INSERT]], in each case as BCP or the relevant industry body may update them from time to time (Relevant Policies);

(d) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements[, the Relevant Policies] [and Clause 13.1(b)], and will enforce them where appropriate;

(e) promptly report to BCP any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;

(f) immediately notify BCP (in writing) if a foreign public official [becomes an officer or employee of the Supplier AND/OR acquires a direct or indirect interest in the Supplier] (and the Supplier warrants that it has no foreign public officials as [officers or employees AND/OR direct or indirect owners] at the date of this agreement);

(g) within [INSERT] months of the date of this agreement, and annually thereafter, certify to BCP in writing signed by an officer of the Supplier, compliance with this Clause 13 by

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the Supplier and all persons associated with it and all other persons for whom the Supplier is responsible under Clause 13.1(d). The Supplier shall provide such supporting evidence of compliance as BCP may reasonably request.

13.2 Without prejudice to Clause 17.1, the Supplier shall ensure that any person associated with the Supplier who is performing services [or providing goods] in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 13 (Relevant Terms). The Supplier shall in any circumstances be responsible for the observance and performance by such persons of the Relevant Terms, and shall in any circumstances be directly liable to BCP for any breach by such persons of any of the Relevant Terms howsoever arising.

13.3 Breach of this Clause 13 shall be deemed a breach, which is not remedied within the specified period, under Clause 11.1(b).

13.4 For the purpose of this Clause 13, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 13 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

14. FORCE MAJEURE

14.1 BCP reserves the right to defer the date for performance of, or payment for, the Services, or to cancel this agreement, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of BCP or any other party), failure of a utility service or transport or telecommunication network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

15. WAIVER

15.1 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.

16. RIGHTS AND REMEDIES

16.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

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17. ASSIGNMENT

17.1 The Supplier shall not, without the prior written consent of BCP, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

17.2 BCP may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

18. THIRD PARTY RIGHTS

18.1 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

19. NOTICES

19.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing 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.

19.2 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt [or at the time the notice is left at the proper address];

19.3 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.

20. GOVERNING LAW

20.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

21. JURISDICTION

21.1 Each party irrevocably agrees that the courts of England 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).

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THE SCHEDULE
MANDATORY POLICIES

The Mandatory Policies are:

[Modern Slavery and Human Trafficking Policy].
[Corporate and Social Responsibility Policy].
[Data and Privacy Policy].
[Ethics and Anti-Bribery Policy].
[Expenses Policy].
[Cybersecurity Policy].
[Disaster Recovery and Business Continuity Policy].

Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF BCP]	..... Director
Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF SUPPLIER]	..... Director

ANNEX A
THE PROJECT PLAN

1. Introduction and Background

1.1. Bournemouth Christchurch & Poole Council is looking for a supplier of an electronic access control system to replace the existing hardware for Seafront Operations.

1.2. This will include padlocks for all gates; an electronic key system which is fully programmable to allow access to specific gates at specific times and an audit trail via a cloud-based platform. A bespoke lock system will also be required for the Council's amusement arcade, located at Pier Approach Bournemouth.

1.3. The Bournemouth Christchurch & Poole Seafront Operations team manage all the activities along the coastline in the Borough.

1.4. The Seafront is used by thousands of people each year. It is vital that this area is a safe environment for all and controlling vehicle access is a key part of this.

1.5. The current locking system is open to abuse and provides no ability for the Council to control who is on site at any given time. Nor does it give an audit trail to show when locks have been accessed or by whom.

2. Scope

2.1. The Council will be seeking a supplier to:

- Supply new padlocks and programmable keys for all access gates onto the Seafront Currently the Council requires 200 padlocks & 500 keys but this may increase or decrease during the term of the contract. The Council reserves the right to request the supply of further items during the contract.
- Supply a bespoke locking system for Bournemouth Pier Arcade
- Offer a back-office management system
- Provide on-site training, ongoing maintenance and technical support of hardware and software
- Meet the project implementation deadline and have the system live by 1 April 2020

2.2. The Council will be looking to appoint a preferred supplier in February/March 2020. The supplier will be required to implement the system for testing. The system will then go through a testing phase with the Council before full roll out of all locks. The full roll out of all locks will be subject to satisfactory testing and sign off from the Council. The supplier will need to ensure that there is adequate time within the implementation period for the Council to test the locks. The Council will not be liable for any costs until the satisfactory completion of the testing phase which will be confirmed through a formal sign off with the Council.

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2.3. The system will be required to be operational and in place by 1 April 2020.

2.4. The length of the contract will be for three years, with the option to extend the contract for a further 2 years. Therefore, if all extensions were taken, the full length of the contract will be for 5 years. The contract will commence on 1 April 2020 (or earlier) subject to satisfactory testing and sign off of the system during the implementation period.

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ANNEX B
THE PROJECT SPECIFICATION

3. Requirements

Products:

[Insert Products required**]**

Products must be;

3.1. Marine Grade rust resistant, stainless steel padlocks are required for all external gates. They must be able to withstand the sand, wind and rain that they will encounter within the coastal environment and use throughout the year.

3.2. There is no facility to provide power to the padlocks, therefore all power to the padlock must come from the key.

3.3. The Pier Arcade require cylinder locks, cam locks and T handle push locks. The tenderer is invited to visit the arcade to discuss their specific bespoke requirements prior to submitting a tender.

3.4. The keys must be fully programmable to permit access to specific locks at set times. Each key should have a unique electronic ID which prevents duplication and leaves an auditable record of how each key and lock is used.

3.5. The keys should have the ability to set validation and expiration periods to limit the damage of lost keys.

3.6. The system should have the ability for users to update their keys remotely.

3.7. Each lock and key should come with a minimum twelve-month warranty from the start of the contract. The Supplier will be required to guarantee the items for the warranty period against faulty materials.

3.8. If the Council shall within such Warranty Period or within twenty-five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the items as may have arisen during such Warranty Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies of the Council howsoever arising) promptly remedy such faults or defects (whether by repair or replacement as the Council shall elect) free of charge.

3.9. The system should support 3G, 4G, 5G and Wi-Fi connectivity.

3.10. The proposed system should utilise mobile apps; these should be both Android & iPhone

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compatible.

3.11. The contractor should have a robust business continuity plan, and if for any reason planned maintenance is required, this should take place between the hours of 10pm and 8am.

4. Back-Office Management System Software Requirements

4.1. All products within the back-office system should be configurable.

4.2. A cloud based real time reporting system must be included as part of the software. It should have a dashboard and should be able to provide the following as a minimum:

- Update access permissions for users, keys & locks
- Provide an audit trail to show who has accessed or attempted to access a lock
- Be fully secure from attack. Details of encryption to be provided as part of the tender.
- Detail key & lock allocation across the site.

5. Training and Support

5.1. For an initial period of five years, a support contract will be required.

5.2. As part of the contract, Bournemouth Christchurch & Poole Council requires the successful company to provide training to the relevant staff during the installation period. This should be through a face to face workshop for up to ten staff; for a minimum of 3 hours. Printed and digital user guides should be provided to the client, providing step by step details on how to use the system.

5.3. Once the system has gone live, ongoing support will be required for a three-year period.

5.4. Throughout the set up and go live period, a designated project manager should be assigned by the successful bidder so that Bournemouth Christchurch & Poole Council have one main point of contact.

5.5. A support desk should be available to take calls from Bournemouth Christchurch & Poole Council Monday – Friday during office hours of 9am – 5pm. As well as between 10am and 4pm at weekends and bank holidays from 1 April – 31 October each year. The weekend cover and bank holiday support is essential as these periods are our busiest times.

5.6. All hardware support calls must be responded to within twenty-four hours of the call being logged and resolved within five days.

5.7. If any item must be returned to the supplier, this should be fixed and returned within five

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working days of receipt, if this is not possible a temporary replacement must be loaned during the repair period. Return postage costs for faulty equipment are to be covered by the supplier during the warranty period.

5.8. The support of the system will cover all software faults and hardware faults. It is expected that the supplier should be able to manage software faults remotely and resolve any issues remotely. However, where required, the supplier will need to ensure that they are also able to attend site to resolve any software faults.

5.9. The supplier will be expected to resolve any software faults in accordance with the below table:

Period of Time	**Length of Period**	**Resolution Time Required from point of notification to the Supplier**
Air Festival	4 days	4 Hours
Summer Holidays	6 Weeks	12 Hours
All other times	All other times	24 Hours

5.10. The support for the hardware should not cover faults that have been caused due to misuse, accident, or third-party damage. These faults will be at the cost of the Council.

6. Implementation

6.1. The supplier will be required to implement the system with the Council.

6.2. The supplier will be required to support the Council through rigorous testing of the system to ensure they meet the Council's requirements. A minimum of twelve locks & keys will be required during this testing phase.

6.3. The system will be tested on site during March 2020. Throughout this period members of the Operations team will carry out user scenarios to test all essential requirements of the specification. If any errors appear, or areas of the specification are not met then the contractor will be asked to rectify. The Council will not confirm the full roll out of the system

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until the successful completion of the testing phase and the essential requirements as listed have been met.

6.4. From the 1 April 2020 or following completion of successful testing, the system will 'go live' and this is when the support contract will commence.

7. Contract Management

7.1. As a minimum, the Council requires Suppliers to (but is not limited to):

7.1.1. Provide a single point of contact for Account Management.

7.1.2. Attend regular review meetings with the Council. In these meeting the following items will need to be reported on and discussed: Performance, deliveries, repairs, new items or exchanges, sales, product ranges, pricing.

7.2. Contract meetings will be required to assess the progress which will initially run at monthly intervals for the first three months and then will be required quarterly for the remainder of the contract.

7.3. There shall be an annual review meeting and the supplier is to provide the Council with data on the previous 12 months, including performance and repairs.

7.4. Provide MI Reports as required.

8. Invoicing

8.1. For any ongoing support and maintenance fee's to be charged annually, these should be invoiced quarterly in arrears.

8.2. Provided the Supply is performed satisfactorily in compliance with the Order, and subject to receipt of a valid invoice from the Supplier, the Council will pay the Supplier via its electronic payment system as specified in the Contract or in default within 30 days from the date on which the Council has determined that the invoice is valid and undisputed.

9. Standards

The Supplier shall:

9.1. provide the Council with such assistance as the Council may reasonably require during the implementation period in respect of the supply of the goods and services;

9.2. the Supplier(s) shall at all times during the Contract Period comply with the specification and contract terms;

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9.3. ensure that any products recommended or otherwise specified by the Supplier for use by the Council meet the requirements of the Council;

9.4. deliver the Goods and Services in a proportionate and efficient manner;

9.5. minimise any disruption to the Sites and/or the Council's operations when delivering the goods and services;

9.6. the Supplier(s) shall ensure that the Supplier Personnel shall be appropriately experienced, qualified and trained to supply the Goods and Services in accordance with the Specification;

9.7. at all times allocate sufficient resources with the appropriate technical expertise to supply and to provide the Goods and Services in accordance with this Specification;

9.8. ensure that any Documentation and training provided by the Supplier to the Council are comprehensive, accurate and prepared in accordance with Good Industry Practice;

9.9. ensure that neither it, nor any of its Affiliates, embarrasses the Council or otherwise brings the Council into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust in the Council, regardless of whether such act or omission is related to the Supplier's obligations under the contract;

9.10. gather, collate and provide such information and co-operation as the Council may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under the contract

9.11. The Supplier shall have an ongoing obligation throughout the Contract to identify new or potential improvements to the provision of the Goods and Services with a view to reducing the Council's costs and/or improving the quality and efficiency.

9.12. Throughout the Contract Period, suppliers shall notify The Council of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Council, of Goods and Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Council and require the written consent.

Where a new or emergent standard is to be developed or introduced by the Council, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Council's receipt of the Goods and/or Services is explained to the Council (within a reasonable timeframe), prior to the implementation of the new or emergent Standard

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