

DATED

30TH JANUARY 2023

THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE

AND

PROPERTY LETTING FURNITURE SOLUTIONS LIMITED

**TERMS AND CONDITIONS FOR THE SUPPLY OF
BEDS AND ASSOCIATED DELIVERY SERVICES**

This Contract is made the 30th day of January 2023

between

THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (hereinafter "**the Council**") of the one part

and

PROPERTY LETTING FURNITURE SOLUTIONS LIMITED, registered number 05405834 whose registered office is at 1 Plfs House, Unit 1 Swinborne Road, Burnt Mills Industrial Estate, Basildon, Essex, England, SS13 1EH (hereinafter "**the Supplier**") of the other part

(hereinafter collectively "**the Parties**" and independently "**the Party**")

WHEREAS

A. The Council is a local authority as defined by section 270 of the Local Government Act 1972 and has a duty under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

B. The Supplier acknowledges that the Council is subject to the Best Value duty (under the Local Government Act 1999 (as amended)) and that the Supplier shall throughout the Contract Period assist the Council in discharging its Best Value duty by actively promoting, supporting and assisting the Council in meeting its Best Value duty in respect of the Services.

C. By this Contract the Council seeks to procure the provision of specific services and/or supplies from the Supplier.

INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: means **01 February 2023**.

Commercially Sensitive Information: the information 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 the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.12.

Contract: the contract between the Council and the Supplier for the supply of Services in accordance with these Conditions.

Contract Period: the period from the Commencement Date until expiry of the Contract in accordance with clause 2.1.

Council Materials: has the meaning set out in clause 4.3 (i).

Controller, Processor, Data Subject, Personal Data, Personal Data Breach: have the meanings given in Data Protection Legislation;

Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended;

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

Domestic Law: the law of the United Kingdom or a part of the United Kingdom;

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

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, 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 Event: means any circumstance not within a party's reasonable control including, without limitation:

- a) war, civil war, conflict or terrorist attack arising within and affecting the United Kingdom;
- b) nuclear, chemical or biological contamination of the Provider's property arising from any of the events at (a) above;
- c) riot, flood or earthquake; or epidemic of pandemic.

GDPR: takes the meaning referred to in the definition of Data Protection Legislation;

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

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by the Council and the Supplier and contained in Schedule 1 attached hereto.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a references to a party includes its personal representatives, successors or permitted assigns;
- (c) clause, Schedule and paragraph headings shall not affect the interpretation of this Contract;
- (d) the Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules;
- (e) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (f) any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (g) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (h) 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
- (i) a reference to **writing** or **written** includes faxes and e-mails.

2 BASIS OF CONTRACT

- 2.1 This Contract is for the period from the Commencement Date and continue until the expiry of **31st March 2025**, , unless terminated earlier by either Party in accordance with clause 12 (Termination). The Council may wish to extend the Contract for an additional period (or periods) of up to 12 months, extendable upon agreement in writing between the Parties.
- 2.2 These Conditions apply to the Contract 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.
- 2.3 All of these conditions shall apply to the supply of services except where the application to one or the other is specified.

3 DATA PROCESSING

- 3.1 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 or rights under the Data Protection Legislation.
- 3.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement, will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- (a) “Controller” (where the other Party acts as the “Processor”);
 - (b) “Processor” (where the other Party acts as the “Controller”);
 - (c) “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);
 - (d) “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);
- and the Parties shall set out in Schedule 2 (Data Processing) which scenario or scenarios are intended to apply under this Agreement and what the relevant Party is authorised to do as the Processor.
- 3.3 The Supplier shall indemnify the Council against any losses, damages, cost or expenses incurred by the Council arising from, or in connection with, any breach of the Supplier's obligations under this Clause 4.
- 3.4 Where the Supplier intends to engage a Sub-Contractor and intends for that Sub-Contractor to process any Personal Data relating to this Contract, it shall:

- (a) notify the Council in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent from the Council to the processing;
- (c) enter into a written agreement incorporating terms which are substantially similar to those set out in this Clause 4;
- (d) The provisions of this clause shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

4 SUPPLY OF SERVICES

4.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to the Council in accordance with the terms of the Contract.

4.2 The Supplier shall meet any performance dates for the Services specified by the Council.

4.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
- (b) perform the Services with the due care, skill and diligence, in utmost good faith and in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Council;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Council, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Council's premises;

- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier (**Council Materials**) in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation; and
- (j) not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Council may rely or act on the Services.

5 COUNCIL REMEDIES

5.1 If the Supplier fails to deliver or perform the Services by the applicable date, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:

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

5.2 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

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

6 COUNCIL'S OBLIGATIONS

The Council shall:

- (a) provide the Supplier with reasonable access at reasonable times to the Council's premises for the purpose of providing the Services; and
- (b) provide such information as the Supplier may reasonably request for the provision of the Services and the Council considers reasonably necessary for the purpose of providing the Services.

7 CHARGES AND PAYMENT

- 7.1 The charges for the Services shall, unless otherwise agreed upon in writing by the Council, be as set out in the Service Specification (contained in Schedule 1) 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 Council, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 7.2 In consideration of the supply of Services by the Supplier, the Council shall pay the invoiced amounts for Services previously rendered to the satisfaction of the Council in accordance with this Contract within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 7.3 The Council shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 7.4 For the purposes of clause 7.3 an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
- 7.5 All amounts payable by the Council 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 Council, the Council shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above National Westminster Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 7.7 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 Council to inspect such records at all reasonable times on request.

- 7.8 The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

8 INTELLECTUAL PROPERTY RIGHTS

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

9 INDEMNITY

- 9.1 The Supplier shall keep the Council indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered incurred by the Council as a result of or in connection with:
- (a) any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

- (b) any claim made against the Council by a third party arising out of or in connection with the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

9.2 This clause 9 shall survive termination of the Contract.

10 INSURANCE

During the term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Council'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.

11 CONFIDENTIALITY

11.1 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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, officers, representatives, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

11.2 This clause 11 shall survive termination of the contract.

12 TERMINATION

12.1 Without affecting any other right or remedy available to it, either Party may terminate this Contract with immediate effect by giving one month's written notice to the other Party if:

- (a) the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 24 hours of receipt of notice in writing to do so;

- (b) the Supplier repeatedly breaches any of the terms of the Contract 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 the Contract;
- (c) 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;
- (d) 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 (where 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 the Supplier;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (f) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (g) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- (i) the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (j) 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;
- (k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(c) to clause 12.1(j) (inclusive);

- (l) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or
- (m) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

12.3 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13 CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason, the Supplier shall immediately deliver to the Council all Deliverables whether or not then complete, and return all Council Materials. If the Supplier fails to do so, then the Council may 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.

14 FORCE MAJEURE

14.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control (**Force Majeure Event**).

14.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

14.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 5 Business Days, the Council may terminate the Contract immediately by giving written notice to the Supplier.

15 FREEDOM OF INFORMATION

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

- 15.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within three days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information belonging to the Council in its possession or power in the form that the Council requires within five Business Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.
- 15.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations;
 - (b) is to be disclosed in response to a Request for Information.
- 15.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 15.5 The Supplier acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004), be obliged under FOIA or the Environmental Information Regulations to disclose Information:
- (a) without consulting with the Supplier, or
 - (b) following consultation with the Supplier and having taken its views into account.
- provided always that where clause 15.5(b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 15.6 The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 15.7 The Supplier acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Council may

nevertheless be obliged to disclose Confidential Information in accordance with clause 15.5.

16 COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS

16.1 In performing its obligations under the agreement, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- (c) include in contracts with its direct sub-contractors and suppliers provisions which are at least as onerous as those set out in this Clause 16.
- (d) notify the Council as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
- (e) maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Council in connection with this agreement; and permit the Council and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this Clause 16.

16.2 The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

16.3 The Council may terminate the agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this Clause 16.

17 GENERAL

17.1 **Assignment and other dealings.**

- (a) The Council may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over 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 Council.

17.2 **Health and Safety.** The Supplier acknowledges that it has been supplied with a copy of the Council's rules regarding health and safety. The Supplier agrees to comply with these rules, and any additional rules made known to the Supplier from time to time by the Council together with all applicable statutory rules and regulations regarding these matters. The Council will be responsible for procuring that its employees and agents also comply with these rules and regulations. Either party shall notify the other as soon as practicable of any health and safety hazards at the Council's Premises of which it becomes aware. The Supplier will draw these hazards to the attention of the Staff and will instruct those persons in connection with any necessary associated safety measures.

17.3 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.3(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17.4 **Severance.** If any provision or part-provision of the Contract 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 the Contract.

17.5 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract 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.

- 17.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.7 **Anti Discrimination.** The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment. The Supplier shall take all reasonable steps to secure the observance of clause 17.7 by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in performance of this Contract.
- 17.8 **Audit.** The Supplier shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:
- (a) the Services provided under it;
 - (b) all expenditure reimbursed by the Council;
 - (c) all payments made by the Council.
- The Supplier shall on request afford the Council or the Council's representatives such access to those records as may be required in connection with the Contract.
- 17.9 **Third party rights** This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this agreement.
- 17.10 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Parties (or their representatives).
- 17.11 **Entire Agreement.** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 17.12 **Rights and remedies.** The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17.13 **Governing law.** 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 the law of England and Wales.

17.14 **Jurisdiction.** 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 Contract or its subject matter or formation (including non-contractual disputes or claims).

In witness whereof the Parties have executed this Contract on the day and year first above written

For and on behalf of **THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE**

Signature... [redacted]

Name ... [redacted]

For and on behalf of **PROPERTY LETTING FURNITURE SOLUTIONS LIMITED**

Signature... [redacted]

Name ... [redacted]

SCHEDULE 1

SERVICE SPECIFICATION AND PRICING

APPENDIX A – SERVICE SPECIFICATION

Provision of beds to recipients of UK Shared Prosperity Fund Grants

F&HDC Funding projection

- Year 1 (to March 2023) : £18,900
- Year 2 (2023/24) : £34,650
- Year 3 (2024/25) : £64,890

Items to be supplied:

- Single frame beds
- Double frame beds
- Bunk frame beds
- Single Divan beds with headboard
- Double Divan beds with headboard

All beds are to be supplied with a suitable mattress.

Items are to be mid-range in terms of cost.

All-inclusive Service

The contractor will provide an all-inclusive service for the grant recipient. This will include delivery, fitting, and removal and proper disposal of any old items. This may also include a pre-delivery visit to check size and fit of item, if required.

Price Fluctuations

It is understood that prices cannot be guaranteed due to a fluctuating market any may change from time to time. It may also be necessary to offer alternative or substitute products different from those stated in the contractor's original tender.

For each transaction, the contractor will send a quote to F&HDC for approval before arranging delivery with the grant recipient.

Process

Information passed to supplier will include household size to help identify the appropriate item for the grant recipient. Supplier will also be provided with contact details for each grant recipient to arrange item delivery.

F&HDC will make payment within 30 days of receiving an invoice. Invoices must make reference to the grant recipient or include F&HDC's grant reference number.

F&HDC will issue one purchase order each financial year as a draw-down order for the contract. All invoices will reference this purchase order number.

Invoices are to be emailed to invoices@folkestone-hythe.gov.uk (preferred) or sent by post to Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY.

PRICING

Item	Product	All-inclusive price per unit	Weighting Qty over 3yr term	Adjusted Subtotal
Single bed frame and mattress	The Jane metal bed frame with mesh support & deep quilt mattress	██████	105	██████
Double bed frame and mattress	The Jane metal bed frame with mesh support & deep quilt mattress	██████	25	██████
Bunk bed frame and mattresses	Metal frame bunk bed (silver or black) & 2 x deep quilt mattress (top matt slim for bunk bed)	██████	8	██████
Single divan bed with headboard and mattress	Single wooden/fabric divan, faux leather headboard & deep quilt mattress	██████	25	██████
Double divan bed with headboard and mattress	Double wooden/fabric divan, faux leather headboard & deep quilt mattress	██████	25	██████
			TOTAL	██████

SCHEDULE 2
DATA PROCESSING

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

The contact details of the Council's Data Protection Officer are: [REDACTED] at FHHC, Civic Centre Castle Hill Ave, Folkestone CT20 2QY

The contact details of the Supplier's Data Protection Officer are: [REDACTED], [REDACTED]

The Processor shall comply with any further written instructions with respect to processing by the Controller.

Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Council is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Clause 21.2 to 23.15 and for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor.</p>
Duration of the processing	For the duration of this Contract only.
Nature and purposes of the processing	<p>Use of contact information for the purpose of providing delivery and disposal services.</p> <p>Use of household size information for the purpose of identifying appropriate products.</p>
Type of Personal Data	name, address, telephone number, household size
Categories of Data Subject	Customers/Recipients of grants under the Controller's UK Prosperity fund scheme

