Dated

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Supply of services agreement

between

ASHFORD BOROUGH COUNCIL

and

Party 2

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**THIS AGREEMENT** is dated

Parties

1. **ASHFORD BOROUGH COUNCIL** of Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL (Supplier).
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Authority).

Background

[DESCRIBE BACKGROUND.]

Agreed terms

# Interpretation

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

## Definitions.

Agreement: this written Agreement between the **Authority** and the **Supplier** consisting of these clauses and any attached Schedules and Appendixes.

Authority's Equipment**:** any equipment, systems, cabling or facilities provided by the Authority and used directly or indirectly in the supply of the Services.

**Commercially Sensitive Information:** the information listed in schedule [] 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 Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

**Confidential Information:** any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including Commercially Sensitive Information.

**Contract Administrator:** means the Authority’s services team Leader or his duly authorised representative

Deliverables**:** all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document**:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**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.

Holding company**:** has the meaning given in clause 1.6.

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

In-put Material**:** all Documents, information and materials provided by the Authority relating to the Services, including computer programs, data, reports and specifications.

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

Key Personnel**:** any member of the Supplier's Team who is identified as being key in the Project Plan and who is appointed under clause 4.3.

Law**:** any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply.

Pre-existing Materials**:** all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications.

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

Project Milestones**:** a date by which a part of the Project is to be completed, as set out in the Project Plan.

Project Plan**:** the detailed plan set out in the Proposal describing the Project and setting out the Project timetable (including Project Milestones) and responsibilities for the provision of the Services in accordance with the Specification.

Specification**:** the specification for the Project as set out in the Authority’s invitation to tender agreed in accordance with clause 3 and, on such agreement, to be attached to this agreement and to form Schedule 2.

Proposal**:** the materials set out in Annex 1 handed to the Authority supporting the Supplier's bid to the Authority and describing how the Supplier proposes to carry out the Services.

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

Services**:** the services to be provided by the Supplier under this agreement, as set out in Schedule 1 and the Supplier's obligations under this agreement, together with any other services which the Authority takes from the Supplier.

Sub-Contract**:** any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof.

Sub-Contractor**:** the third parties that enter into a Sub-Contract with the Supplier.

Subsidiary**:** has the meaning given in clause 1.6.

**Supervisor:** means the person nominated by the Contractor to manage the Contract and to act as the duly authorised representative of the Contractor for the day-to-day liaison with the Contract Administrator.

Supplier's Equipment**:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Authority.

Supplier's Manager**:** the Supplier's manager for the Services appointed under clause 4.3.

Supplier's Team**:** the Supplier's Manager and all employees, consultants, agents and subcontractors which it engages in relation to the Services and who are appointed under clause 4.3.

VAT**:** value added tax chargeable under the Value Added Tax Act 1994.

## Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

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

## The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

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

## A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 [and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee]. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

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

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

## A reference to any party shall include that party's personal representatives, successors and permitted assigns.

## A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

## A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

## A reference to **writing** or **written** includes fax but not e-mail.

## Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## References to clauses and Schedules are to the clauses and Schedules of this Agreement.

## Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

# Commencement and duration

## The Supplier shall provide the Services to the Authority on the terms and conditions of this agreement.

## The Supplier shall provide the Services from DATE.

## The Services supplied under this agreement shall continue to be supplied until the Project is completed in accordance with the Project Plan, unless this agreement is terminated in accordance with clause 13.

# Project Plan

## The Project Plan shall be agreed in the following manner:

### the Authority shall provide the Supplier with a Specification, setting out the requirements and specifications of the services which it is requesting from the Supplier, including a description of what work is to be done, dates by which it is to be started and finished, Deliverables, In-put Materials and any additional information requested by the supplier from the authority to determine the project plan;

### the Supplier shall, perform the Services in accordance with the Project Plan.; and

# Supplier's responsibilities

## The Supplier shall provide the Services, and deliver the Deliverables to the Authority, in accordance with this Agreement], and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

## The Supplier shall meet, and time is of the essence as to, any Project Milestones specified in this Agreement]. If the Supplier fails to do so, the Authority may (without prejudice to any other rights it may have):

### terminate this agreement in whole or in part without liability to the Supplier;

### refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

### purchase substitute services from elsewhere;

### hold the Supplier accountable for any loss and additional costs incurred; and

### have all sums previously paid by the Authority to the Supplier under this agreement refunded by the Supplier.

## The Supplier shall:

### co-operate with the Authority in all matters relating to the Services;

### subject to the prior written approval of the Authority, appoint or, at the request of the Authority, replace without delay:

#### the Supplier's Manager, who shall have authority under this agreement contractually to bind the Supplier on all matters relating to the Services; and

#### any member of the Supplier's Team, who shall be suitably skilled, experienced and qualified to carry out the Services.

### subject to clause 4.3(b), ensure that the same person acts as the Supplier's Manager throughout the term of this agreement;

### procure the availability of the Supplier's Manager and Supplier's Team to provide the Services during the term of this agreement;

### promptly inform the Authority of the absence (or anticipated absence) of the Supplier's Manager, or any member of the Supplier's Team. If the Authority requires, the Supplier shall provide a suitably qualified replacement;

### not make any changes to the Supplier's Manager or the Supplier's Team without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed); and

## The Supplier shall:

### observe, and ensure that the Supplier's Team observe, all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Authority's premises The Authority reserves the right to refuse the Supplier's Team access to the Authority's premises, which shall only be given to the extent necessary for the performance of the Services;

### notify the Authority as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and

### before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:

#### the Services;

#### the installation of the Supplier's Equipment;

#### the use of In-put Material;

#### the use of all Documents, information and materials provided by the Supplier [or its agents, subcontractors, consultants or employees] relating to the Services which existed prior to the commencement of this agreement, including the pre-existing materials specified in the Project Plan; and

#### the use of the Authority's Equipment in relation to the Supplier's Equipment.

## The Supplier acknowledges and agrees that:

### the Authority is entering into this agreement on the basis of the Proposal , the Proposal is accurate and complete in all material respects, and is not misleading; and

### if it considers that the Authority is not, or may not, be complying with any of the Authority's obligations, it shall only be entitled to rely on this as relieving the Supplier's performance under this agreement:

#### to the extent that it restricts or precludes performance of the Services by the Supplier; and

#### if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details to the Authority in writing.

## The Supplier shall:

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

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

#### the Authority’s equality and diversity policy as provided to the Supplier from time to time; and

#### any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

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

## The Supplier shall employ sufficient staff to ensure that the Services are executed in accordance with the Contract and that sufficient reserve of staff is available to cover staff holidays or absence through sickness or other absence.

## The Supplier shall employ sufficient staff to ensure the Services are executed in accordance with the Contract and that sufficient reserve of staff is available to cover rest and comfort breaks.

## The Supplier must employ proper vetting procedures in respect of its employees to safeguard the Authority’s interests.

## The Supplier must seek the Contract Administrator’s written approval to the proposed engagement of any sub-Supplier or agent at any time during the period of the contract, which may be given or declined at the absolute discretion of the Contract Administrator.

## The Supplier shall not employ any member of the Authority’s staff while that person continues to be employed by the Authority without prior written approval of the Contract Administrator.

## The Supplier shall not, without prior written approval of the Contract Administrator, employ in connection with the provision of the Services an ex-employee of the Authority who has been dismissed from the Authority’s employ on disciplinary grounds.

## All employees, sub-Suppliers or agents shall be issued with and must carry at all times, identity cards bearing a recent colour photograph. All such persons must show their identity card if requested to do so by a member of the public or a Authority representative.

## All employees, sub-Suppliers or agents must, whilst undertaking Services, be properly and presentably dressed.

## The Supplier shall not, whether by itself, or any person employed or engaged by the Supplier, solicit or accept any gratuity, tip or other form of money or reward for performing the Services save that expressly implied by the Contract.

## The Supplier shall ensure that every person employed or engaged by the Supplier in provision of the Services is at all times properly and adequately trained and instructed with regard to:

### The task or tasks the person has to perform

### Relevant legislation

### Any relevant provisions of the Contract

### Relevant rules, procedures and standards of the Authority

### A high standard of personal hygiene, cleanliness and appearance

### Conducting themselves in a polite and co-operative manner.

## Any complaints notified to the Supplier by the Contract Administrator must be investigated and the outcome of that investigation reported to the Contract Administrator within 10 working days of such notification.

## The Supplier must supply the Contract Administrator at all times during the period of the Contract with an up to date list of all personnel employed in the provision of the Services, i.e. authorised employees, approved sub-Suppliers and agents.

## The Supplier must remove immediately from the provision of the Services any employee, sub-Supplier or agent who, in the absolute opinion of the Contract Administrator, fails to conduct himself or herself in accordance with the standards or requirements set out in the specification or the Authority’s interests generally. The Supplier shall fully and promptly indemnify the Authority in respect of any claim brought about by any such employee, sub-Suppliers or agent arising from such removal.

## The Supplier must nominate and maintain at all times a Supervisor responsible for managing the Contract who must be able to respond, with authority, to any matters raised by the Contract Administrator.

## The Supplier’s staff engaged in the provision of the Services shall primarily be under the control and direction of the Supplier’s Supervisor, but nevertheless, while at the Authority’s premises and sites associated with the Services and carrying out requirements of the Services, comply with operational instructions given to them by or on behalf of the Contract Administrator.

## The Supplier or its Supervisor must attend any meeting called by the Contract Administrator regarding operation of Services.

## The Supplier shall supply such information as the Authority may reasonably require having due regard to any guidance issued by Central Government in relation to the Supplier's business including but without prejudice to the generality of the foregoing its staff either to the Authority or to such person or persons as the Contract Administrator may reasonably require for the purposes of informing any potential replacement Supplier of the possible extent of any liability arising under the Transfer of Undertaking (Protection of Employment) Regulations 2006 or any statutory re‑enactment modification or amendment thereof.

## The Supplier shall be solely responsible for arranging access to and parking of its vehicles at premises, sites and locations associated with the Services.

## When parking at the various premises, sites and locations associated with the Services, the Supplier’s employees, sub-Suppliers or agents must ensure that their vehicles are parked properly, without causing inconvenience to members of the public and when appropriate, in compliance with car park regulations.

## The Supplier shall throughout the Contract Period ensure that Services are provided at all time and in all respects in accordance with the Contract.

# Authority's obligations

The Authority shall:

### co-operate with the Supplier in all matters relating to the Services and appoint (and, as it thinks fit, replace) the Contract Administrator in relation to the Services , who shall have the authority contractually to bind the Authority on matters relating to the Services ;

### provide such access to the Authority's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Authority in advance, for the purposes of the Services ;

### provide such information as the Supplier may reasonably request and the Authority considers reasonably necessary, in order to carry out the Services , in a timely manner, and ensure that it is accurate in all material respects;

### inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Authority's premises.

# Change control

## The Contract Administrator and the Supplier's Manager shall meet as often as is reasonably necessary but at least once every week to discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

## If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time (and in any event not more than 5 working days after receipt of the Authority's request), provide a written estimate to the Authority of:

### the likely time required to implement the change;

### any necessary variations to the Supplier's charges arising from the change;

### the likely effect of the change on the Project Plan; and

### any other impact of the change on this agreement.

## Unless both parties consent to a proposed change, there shall be no change to this agreement.

## If both parties consent to a proposed change, the change shall be made, only after agreement of the necessary variations to the Supplier's charges, the Services, the and any other relevant terms of this agreement to take account of the change that has been reached and this agreement has been varied in accordance with clause 19.

## If the Supplier requests a change to the scope or execution of the Services, in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature, scope of, or charges for the Services, the Authority shall not unreasonably withhold or delay consent to it. Unless the Supplier's request was attributable to the Authority's non-compliance with the Authority's obligations, neither the Supplier's charges, or any other terms of this agreement shall vary as a result of such change.

# payments to the contactor and non-performance

## Supplier’s Non-Performance

### The Supplier shall inform the Contract Administrator immediately if, for any reason, a part or parts of the Services cannot be performed as described in the Specification.

### In the event of the Supplier failing for any reason to undertake part or parts of the Services, the Contract Administrator may make such arrangements as he sees fit in order to ensure proper performance of the Services and/or safeguard staff and property.

### The Supplier shall not be paid for any part or parts of the Services which it fails to provide, and the Contract Administrator shall use appropriate prices contained in the Tender to determine the amount to be deducted from payments to the Supplier.

### The Authority may deduct from any payment to the Supplier, or recover as a debt losses incurred by the Authority.

### The Authority will provide the Supplier with a written statement of any amounts deducted in accordance with the Agreement, the reasons for the deductions and the method by which they have been calculated.

### The Authority may deduct from any payment due to the Supplier those additional costs incurred by the Authority in engaging others to carry out the Services not undertaken by the Supplier. For the avoidance of doubt, these may include, but not be limited to:

#### The difference between the prices that would have been paid to the Supplier and those actually paid to obtain the Services.

#### Reasonable cost incurred by Authority’s staff involved in making and supervising arrangements for the proper performance of the Services.

## **Payments to the Supplier**

### The Supplier shall submit proper VAT invoices, monthly in arrears, to the Authority in respect of the Services provided.

### Each invoice submitted will provide a full breakdown of services provided for the previous month. The Supplier will quote the Authority’s purchase order number on all invoices.

### Invoices must be submitted to the Authority by [specify method]

### In the event of the Contract Administrator, for any reason being unable to approve an invoice for payment, the Contract Administrator shall inform the Supplier without delay.

### When approving any invoices, the Contract Administrator shall take into account any adjustments required to reflect any Supplier non-performance.

### The Authority shall pay all approved invoices within 30 days of receipt.

# Quality of Services

## The Supplier warrants to the Authority that:

### the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;

### the Services will conform with all descriptions and specifications provided to the Authority by the Supplier, including the Proposal; and

### the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force, and the Supplier will inform the Authority as soon as it becomes aware of any changes in that legislation.

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

## The provisions of this clause 8 shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Supplier.

# Intellectual property rights

## The Supplier assigns to the Authority, 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).

## At its own expense, the Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this agreement, including securing for the Authority all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Authority in accordance with clause 9.1.

## The Supplier shall obtain waivers of any moral rights in the products of the Services (including the Deliverables) 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.

# Indemnity

## The Supplier shall indemnify and hold the Authority 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, the Authority as a result of or in connection with:

### 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

### any claim made against the Authority in respect of any liability, loss, damage, injury, cost or expense sustained by the Authority's employees or agents or by any Authority 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 breach or negligent performance or failure or delay in performance of this agreement by the Supplier.

## During the term of this agreement and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £1 million; Employers liability insurance of not less than £5 million and Public liability insurance for no less than £10 million and shall, on the Authority's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

## The provisions of this clause 10 shall survive termination of this agreement, however arising.

# Confidentiality, FOI and the Supplier's property

## The Supplier undertakes that it shall not at any time disclose to any person any In-put Material, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Authority, its employees, agents, consultants or subcontractors, or any other confidential information concerning the Authority's business or its products which the Supplier may obtain, except as permitted by clause 11.2.

## The Supplier may disclose the Authority's confidential information:

### to the Supplier's Team and to such of its other employees, agents, consultants or subcontractors as need to know it for the purpose of discharging the Supplier's obligations to the Authority. The Supplier shall ensure that its employees, agents, consultants or subcontractors to whom it discloses the Authority's confidential information comply with this clause 11; and

### as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## The Supplier shall not use the Authority's confidential information for any purpose other than to perform its obligations under this agreement.

## All In-put Materials, Authority's Equipment and all other materials, equipment and tools, drawings, specifications and data supplied by the Authority to the Supplier shall, at all times, be and remain [as between the Authority and the Supplier] the exclusive property of the Authority, 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 the Authority. They shall not be disposed of or used other than in accordance with the Authority's written instructions or authorisation.

## FREEDOM OF INFORMATION

## The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

### provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

### transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

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

### not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

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

# Anti-bribery

# The Supplier shall:

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

### 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;

### have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with this clause 12 and will enforce them where appropriate;

### promptly report to the Authority 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;

### within six months of the date of this agreement, and annually thereafter, certify to the Authority in writing signed by an officer of the Supplier, compliance with this clause 12 by the Supplier and all persons associated with it under clause 12.2. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request.

## The Supplier shall ensure that any person associated with the Supplier who is performing services 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 12 (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Relevant Terms.

# Termination

## Subject to clause 2.3 and clause 13.2, this agreement shall terminate automatically on completion of the Services.

## Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

### the other party fails to pay any amount due under this agreement (save where there is a bona fide dispute) on the due date for payment and remains in default not less than ten working days after being notified in writing to make such payment;

### 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 ten working days after being notified in writing to do so;

### 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;

### 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;

### 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;

### 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;

### 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);

### 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;

### 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;

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

### 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;

### 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 13.2.4 to clause 13.2.11 (inclusive);

### the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

### the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or

### there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010); or

### any warranty given by the other party in clause 8 of this agreement is found to be untrue or misleading.

## For the purposes of clause 13.2.2, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

### a substantial portion of this agreement; or

### any of the obligations set out in clause 12 or clauses 4, 8, or 11,

over the term of this agreement . In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

# Consequences of termination

## On termination of this agreement for any reason, the Supplier shall immediately deliver to the Authority:

### all In-put Material and all copies of information and data provided by the Authority to the Supplier for the purposes of this agreement. The Supplier shall certify to the Authority that it has not retained any copies of In-put Material or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 11; and

### all specifications, programs (including source codes) 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 the Authority (to the extent that they have not already done so by virtue of clause 9.1), who shall be entitled to enter the premises of the Supplier to take possession of them.

## If the Supplier fails to fulfil its obligations under clause 14.1, then the Authority may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.

## On termination or expiry of this agreement, the following clauses shall continue in force:

### Clause 9;

### Clause 10;

### Clause 11;

### Clause 13; and

### Clause 30.

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

# Remedies

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

### to rescind this agreement; or

### 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 the Authority to the Supplier under this agreement; or

### to require the Supplier, without charge to the Authority, 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 provisions of this clause 15.

1. **Data protection**

The Supplier shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 1998 (**DPA**) and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement.

# Force majeure

The Authority reserves the right to defer the date for performance of, or payment for, the Services, or to terminate 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 strikes, lockouts or other industrial disputes (whether involving the workforce of the Authority or any other party), failure of a utility service or transport 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 subcontractors.

# Assignment and other dealings

## The Supplier shall not, without the prior written consent of the Authority, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

## The Authority may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this agreement.

# Variation

Subject to clause 3 and clause 6, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

# Waiver

## A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

## A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

# 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.

# Severance

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

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

# Entire agreement

## This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

# Conflict

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

# No partnership or agency

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

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

# Third party rights

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

# Notices

## For the purposes of this clause, but subject to clause 27.7, notice includes any other communication.

## A notice given to a party under or in connection with this agreement:

### shall be in writing and in English;

### shall be signed by or on behalf of the party giving it;

### shall be sent to the party for the attention of the contact and at the address, fax or DX number listed in clause 27.3;

### may be sent by a method listed in clause 27.5; and

### unless proved otherwise is deemed received as set out in clause 27.5 if prepared and sent in accordance with this clause.

## The parties' addresses and contacts are as set out in this table:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Party** | **Contact** | **Address** | **Fax number** | **DX number** |
| [NAME OF PARTY] | [POSITION OF CONTACT] | [ADDRESS] | [FAX NUMBER] | [DX NUMBER] |
| [NAME OF PARTY] | [POSITION OF CONTACT] | [ADDRESS] | [FAX NUMBER] | [DX NUMBER] |
| [NAME OF PARTY] | [POSITION OF CONTACT] | [ADDRESS] | [FAX NUMBER] | [DX NUMBER] |

## A party may change its details given in the table in clause 27.3 by giving notice, the change taking effect for the party notified of the change at [9.00 am] on the later of:

### the date, if any, specified in the notice as the effective date for the change; or

### the date five Business Days after deemed receipt of the notice.

## This table sets out:

### delivery methods for sending a notice to a party under this agreement; and

### for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 27.6:

|  |  |
| --- | --- |
| **Delivery method** | **Deemed delivery date and time** |
| Delivery by hand. | On signature of a delivery receipt or at the time the notice is left at the address. |
| Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage or proof of delivery. | 9.00 am on the second Business Day after posting [or at the time recorded by the delivery service. |
|  |  |
| Fax. | At the time of transmission. |
| Document exchange (DX). | 9.00 am on the second Business Day after being put into the DX. |

## For the purpose of clause 27.5 and calculating deemed receipt:

### all references to time are to local time in the place of deemed receipt; and

### if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

## 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.

## A notice given under or in connection with this agreement is not valid if sent by e-mail.

# Counterparts

## This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

# Multi-tiered dispute resolution procedure

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

### either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the [EMPLOYEE TITLE] of [PARTY 1] and [EMPLOYEE TITLE] of [PARTY 2] shall attempt in good faith to resolve the Dispute;

### if the [EMPLOYEE TITLE] of [PARTY 1] and [EMPLOYEE TITLE] of [PARTY 2] are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of [PARTY 1] and [SENIOR OFFICER TITLE] of [PARTY 2] who shall attempt in good faith to resolve it; and

### if the [SENIOR OFFICER TITLE] of [PARTY 1] and [SENIOR OFFICER TITLE] of [PARTY 2] are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 21 days after the date of the ADR notice.

## If the Dispute is not resolved within 28 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 21 days, or the mediation terminates before the expiration of the said period of 28 days, the Dispute shall be finally resolved by the courts of England and Wales.

# Governing law

This agreement 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.

# 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 agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

1. Services

[DESCRIPTION OF THE SERVICES TO BE PROVIDED UNDER THE AGREEMENT.]

1. Project Plan and Project Specification

[THE PROJECT PLAN CONSISTING OF THE SPECIFICATION AND PROPOSAL INCLUDING ANY PROJECT MILESTONES AGREED.]

1. Pricing
2. Price

[DETAILS OF PRICE, FOR EXAMPLE THE FIXED PRICE OR DAILY RATE.]

1. Payment

[THE PAYMENT SCHEDULE, WHICH SHOULD INCLUDE THE DATES OR EVENTS ON WHICH INSTALMENTS ARE TO BE INVOICED AND THE AMOUNT OF EACH INSTALMENT.]

|  |  |
| --- | --- |
| Signed by [NAME OF DIRECTOR]  for and on behalf of [NAME OF SUPPLIER] | .......................................  Director |
| Signed by [NAME OF DIRECTOR]  for and on behalf of [NAME OF AUTHORITY] | .......................................  Director |
| EXECUTED as a DEED |  |
| by the affixing of the  COMMON SEAL of |  |
| ASHFORD BOROUGH COUNCIL |  |
| in the presence of: | ................................ |
|  | Mayor  ……………………………………  Solicitor |

1. Proposal

[THE TENDER SUBMISSION ACCEPTED BY THE COUNCIL]