

DATED

2021

DORSET COUNCIL

and

[SERVICE PROVIDER]

CONTRACT

relating to

**THE PROVISION OF CROSSING ATTENDANTS AT WAREHAM LEVEL
CROSSING**

THIS AGREEMENT is made the xx xxxx 2021

BETWEEN

- (1) **DORSET COUNCIL** of South Walks House, South Walks Road, Dorchester, Dorset, DT1 1UZ (hereinafter referred to as “the **Council**”); and
- (2) [] (Company Number: []) whose registered office is at [] (hereinafter referred to as “the **Service Provider**”) (together referred to as “the Parties”)

WHEREAS the Council is desirous that certain services should be provided by the Service Provider xxxxxxxxxxxxxxxx and the Service Provider has been appointed to provide the required services

NOW THIS AGREEMENT WITNESSETH as follows

1. DEFINITIONS

- 1.1 In this agreement unless the context otherwise requires the following expressions have the following meanings:-
- 1.1.1 “**Agreement**” means the Agreement between the Council and the Service Provider consisting of the Purchase Order, these Terms and Conditions and any other documents (or parts thereof) specified in the Purchase Order or scheduled hereto.
- 1.1.2 “**Council**” means Dorset Council.
- 1.1.3 “**Data Protection Legislation**” in this schedule means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018.
- 1.1.4 “**EIR**” means the Environmental Information Regulations 2004 (as may be amended from time to time).
- 1.1.5 “**Exempt Information**” means any information or class of information (including but not limited to any document, report, Agreement or other material containing information) relating to this Agreement or otherwise relating to the parties to this Agreement which potentially falls within an exemption to FOIA (as set out therein).
- 1.1.6 “**FOIA**” means the Freedom of Information Act 2000 and all subsequent regulations under this or any superseding or amending enactments and regulations; any words and expressions defined in the FOIA shall have the same meaning in this clause.
- 1.1.7 “**FOIA Notice**” means a decision notice, enforcement notice, and/or an information notice issued by the Information Commissioner.
- 1.1.8 “**Intellectual Property Rights**” means all patents, registered and unregistered designs, copyrights, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable.
- 1.1.9 “**Price**” means the price of the Services being provided by the Service Provider.

1.1.10 **“Public Body”** as defined in the FOIA 2000.

1.1.11 **“Receiving Party”** means a party to this Agreement to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response.

1.1.12 **“Request for Information”** means a written request for information under the FOIA as defined by Section 8 of the FOIA.

1.1.13 **“Service Provider”** means the person, firm or company or any other organisation contracting with the Council.

1.1.14 **“Service Provider’s Staff”** means those employees and permitted subService Providers of the Service Provider engaged from time to time in providing the Services and any employees of any such subService Providers who are so engaged.

1.1.15 **“Services”** means all services of whatever nature, to be provided by the Service Provider to the Council and described in the Agreement; this includes design concepts or Consultant’s reports.

1.1.16 **“Writing”** includes facsimile transmissions and electronic mail, provided that the electronic mail is acknowledged and confirmed as being received.

1.2 In this Agreement (including the recitals) unless the context otherwise requires:-

1.2.1 Clause headings are for ease of reference only;

1.2.2 References to clauses are to clauses and schedules in this Agreement;

1.2.3 The singular includes the plural and vice versa and any of the genders include the other;

1.2.4 Any reference to a person includes a charity, company, corporation, partnership or unincorporated association;

1.2.5 Reference to any party includes its successors in title, transferees and assignees and references to the Council shall include any successor council or public sector body;

1.2.6 References to any statute include any statutory modification, extension or re-enactment of it or any part of it for the time being in force and also includes all instruments and regulations deriving validity from that statute; and

1.2.7 References to this Agreement or any other deed, agreement or document, are to the Agreement or, as the case may be, such other deed, agreement or document as the same may have been or may be from time to time amended, varied, altered, modified, supplemented or novated.

2. **GENERAL CONDITIONS**

2.1 The Council hereby agrees to engage the Service Provider and the Service Provider hereby agrees to supply Services upon the terms and conditions specified herein.

2.2 No variation of these Terms and Conditions shall be binding unless agreed expressly in writing by both the Council and the Service Provider.

- 2.3 These Terms and Conditions shall apply to the exclusion of any other terms and conditions submitted, proposed or stipulated by the Service Provider, whether in writing or orally, and any such other term or condition is hereby expressly excluded or waived.
- 2.4 The Service Provider shall complete the Services within the agreed times but time shall not be of the essence in performance of any Services unless expressly stated in writing by the Council.
- 2.5 The Service Provider represents and warrants to the Council that by virtue of entering into this Agreement it is not and will not be in breach of any express or implied obligation to any third party binding upon it.

3. **COMMENCEMENT**

- 3.1 **Term:** The supply shall be for a period of 3 years commencing on 01 August 2021 (TBC) and expiring on 31 July 2024 (TBC) ("the Term").

4. **SPECIFICATION AND QUALITY OF THE SERVICES**

- 4.1 The quantity, quality and description of the Services shall comply in all respects with any quoted British standards and the specification or illustration contained in any product pamphlet or other sales or marketing literature of the Service Provider or drawings, samples and patterns specified in the Purchase Order or any modifications thereof that may be agreed by the Council in writing.

5. **ALTERATIONS TO THE SPECIFICATION OF SERVICES**

- 5.1 The parties may at any time mutually agree upon and execute alterations in the scope of Services to be provided under this Agreement.
- 5.2 On receipt of a request from the Council for alterations the Service Provider shall, within 5 working days or such other period as may be agreed between the parties, advise the Council by notice in writing of the effect of such alterations, if any, on the price.
- 5.3 Where the Service Provider gives written notice to the Council agreeing to perform any alterations on terms different to those already agreed between the parties, the Council shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Service Provider by notice in writing whether or not it wishes the alterations to proceed thereafter the Service Provider shall perform this Agreement upon the basis of such amended terms.

6. **PRICE AND PAYMENT**

- 6.1 Prices for the supply of Services are set out in Schedule 2 and the Service Provider shall invoice the Council as required with the invoice to contain sufficient detail for the Council to identify which invoice relates to. Invoices should be addressed to the Accounts Payable, Dorset Council, County Hall, Colliton Park, Dorchester, DT1 1XJ unless notified otherwise by the Council.
- 6.2 The Council reserves the right to set off against the price of Services any sums owed or becoming due to the Council from the Service Provider.

- 6.3 The Council will make payment to the Service Provider within 30 days following the receipt of the relevant undisputed invoice or acceptance of the relevant services.
- 6.4 V.A.T., where applicable, shall be shown separately on all invoices as a strictly net extra, the invoice must comply with the V.A.T. Rules and Regulations.

7. **DELIVERY**

- 7.1 The Invitation to Tender will specify the provision of the service or Services.
- 7.2 If Services are provided by the Service Provider otherwise than in accordance with the terms of the Agreement, the Service Provider shall immediately effect correct provision of the Services and shall be responsible for any additional costs or expenses incurred by the Council or the Service Provider in doing so.

8. **PERFORMANCE**

- 8.1 The Service Provider shall in accordance with the requirements of the Specification, supply the Services and perform such other duties as may be mutually agreed in writing from time to time.
- 8.2 The Service Provider shall give at all times the attention and skill necessary for the proper performance of those obligations.
- 8.3 While the Service Provider's method of work is its own, the Service Provider shall comply with the reasonable requests of the Council and shall use its best endeavours to promote the interests of the Council in relation to the Services.

9. **SUBSTITUTION**

- 9.1 The Service Provider shall not substitute any alternative services for any services agreed to be supplied hereunder unless such substitution will not materially affect the requirements of the Council as specified in the Tender and will not result in any increase in price and has the prior approval in writing of the Council's Project Manager.

10. **REJECTION**

- 10.1 The Council shall have the right to reject any Services which do not comply with the Agreement and are, without limitation, not of a stipulated quality or quantity or measurement, unfit for the purpose for which they are required, or non-compliant with the description or specification.
- 10.2 If the Service Provider is unable to supply acceptable replacement Services within the time specified in the Agreement, or within any extension of such time as the Council may grant, the Council will be entitled to purchase elsewhere other Services, as near as is practicable to the same Agreement specifications as circumstances shall permit, but without prejudice to any other right which the Council may have against the Service Provider including, but not limited to, payment by the Service Provider of any excess costs incurred by the Council in doing so.
- 10.3 The making of such payment shall not prejudice the Council's right of rejection and the Service Provider shall immediately reimburse the Council with an amount equal to that paid by the Council in respect of the Services and any applicable taxes. Before

exercising the said right elsewhere, the Council shall give the Service Provider reasonable opportunity to replace rejected Services with Services that conform to the Agreement.

11. THE COUNCIL'S OBLIGATIONS

- 11.1 To enable the Service Provider to perform its obligations under this Agreement the Council shall:-
- (a) ensure that its employees co-operate fully with the Service Provider and the Service Provider's Staff in relation to the provision of the Project;
 - (b) provide the Service Provider with any information reasonably required by the Service Provider;
 - (c) promptly furnish the Service Provider with such information and documents as it may reasonably request for the proper performance of its obligation hereunder;
 - (d) obtain all necessary permissions and consents which may be required before the commencement of the Services; and
 - (e) comply with such other requirements as may be otherwise agreed between the parties.
- 11.2 Without prejudice to any other rights to which the Service Provider may be entitled, in the event that the Council unlawfully terminates or cancels the Services agreed to in the Purchase Order, the Council shall be required to pay to the Service Provider as agreed damages and not as a penalty the full amount of any third party costs to which the Service Provider has reasonably committed and in respect of cancellations on less than 5 working days' written notice the full amount of the Services.

12. WARRANTY

- 12.1 The Service Provider warrants and represents to the Council that:

12.1.1 it has the full capacity and authority to enter into and perform this Contract, and that the Contract is executed by a duly authorised representative of the Service Provider;

12.1.2 it shall perform the Services using reasonable care and skill with suitably qualified Personnel, to a standard which conforms to generally accepted industry standards and practice;

12.1.3 it shall use all reasonable endeavours to achieve the outcomes in the Service Specification and that the outcomes shall be in accordance in all material respects with the Service Specification and accompanying documents;

12.1.4 the Service Provider's Personnel shall have the necessary skills, professional qualifications and experience to perform the Services in accordance with the Service Specification and industry standards and practice, the Service Provider being responsible for all costs, fees, expenses, and charges for training necessary or required for the Service Provider to perform the Services;

12.1.5 it has obtained all necessary and required licences, consents and permits to perform the Services;

12.1.6 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording or any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract;

12.1.7 as at the Contract commencement date, all information, statements and representations contained in its tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Contract and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

12.1.8 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Contract which may be entered into with the Council.

12.2 Each of the parties acknowledges that in entering into this Contract it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Contract and any Clauses, warranties or other terms implied by statute, common law or custom and practice are excluded from this Contract to the fullest extent permitted by Law.

13. **SERVICE PROVIDER'S WARRANTIES**

13.1 The Service Provider warrants and undertakes to the Council that:

13.1.1 the Service Provider and the Service Provider's Staff have the necessary skill and expertise to provide the Services and carry out the Services as required by the Council on the Terms set out herein;

13.1.2 the Service Provider will provide independent and unbiased advice to the Council in relation to the Services;

13.1.3 the Services will be provided in a timely and professional manner and in accordance with the time schedules reasonably stipulated by the Council and will conform to the standard generally observed in the industry for similar Services;

13.1.4 without prejudice to Clause 20.1 of this Agreement the Service Provider will not without the prior written consent of the Council accept any commission or gift or other similar financial benefit or inducement from any Service Provider or potential Service Provider of the whole or any part of the Services and will ensure that its employees, agents and subService Providers will not accept any such and will forthwith give the Council details of any such commission, benefit or inducement which may be offered;

13.1.5 no announcement or publicity concerning this Agreement or the Services or any matter ancillary thereto shall be made by the Service Provider without the prior written consent of the Council;

- 13.1.6 the Service Provider has in effect and will maintain in effect during the continuance of this Agreement professional indemnity insurance on the terms set out in the Tender and will not do or omit to do anything whereby such insurance may be vitiated either in whole or part.

14. **SUBSERVICE PROVIDERS AND EMPLOYEES**

- 14.1 At all times, the Service Provider shall ensure that:
- 14.1.1 each of the Service Provider's Staff is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - 14.1.2 there is an adequate number of Service Provider's Staff to provide the Services properly; and
 - 14.1.3 all of the Service Provider's Staff comply with any relevant Council policies in providing the Services
- 14.2 The Service Provider shall replace any of the Service Provider's Staff who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Service Provider's Staff for any reason, the Service Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

15. **ASSIGNMENT AND SUBCONTRACTING**

- 15.1 Save as provided in subclause 15.2 below the Service Provider shall not be entitled to transfer, assign or subcontract any of its rights or obligations under this Agreement.
- 15.2 The Service Provider shall be entitled (subject to prior written approval of the Council which shall not be unreasonably withheld or delayed) to engage the services of independent Service Providers of its own to assist with its duties hereunder PROVIDED that the Service Provider:
- 15.2.1 shall not be relieved from any of its obligations hereunder by engaging any such independent Service Provider;
 - 15.2.2 shall secure binding obligations from any such independent Service Provider so as to ensure that the independent Service Provider will comply with all the Service Provider's obligations under this Agreement;
 - 15.2.3 shall not require the Council to make any additional payments for any independent Service Provider or agent appointed by the Service Provider to assist in complying with its obligations under this Agreement.
- 15.3 Where the Service Provider enters into a sub-contract with a Service Provider or Service Provider for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Service Provider to the sub-Service Provider within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 15.4 The Council shall be entitled (subject to the prior written approval of the Service Provider which shall not be unreasonably withheld or delayed) to transfer, assign or otherwise dispose of in whole or in part its rights under this contract.

16. **INDEMNIFICATION**

- 16.1 The Council shall indemnify the Service Provider against all claims, costs and expenses which the Service Provider may incur and which arise directly from the Council's breach of any of its obligations under this Agreement.
- 16.2 The Service Provider shall indemnify the Council against all reasonable damage, liability, costs, claims, actions and proceedings arising out of the performance, defective performance or otherwise of this Agreement by the Service Provider, its employees servants or agents.
- 16.3 Without prejudice to Clause 13.1.6, the Service Provider shall indemnify the Council and keep the Council fully and effectively indemnified against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Council may sustain or incur or which in any case arise directly or indirectly out of or in relation to, or by reason of:
- 16.3.1 the negligence, reckless or wilful misconduct of the Service Provider, its employees, agents or subService Providers in the provision of the Services;
 - 16.3.2 the breach of any of the Service Provider's warranties and undertakings contained herein or
 - 16.3.3 any unauthorised act or omission of the Service Provider, its employees, agents or subService Providers.
- 16.4 It is hereby agreed and declared for the avoidance of doubt that in the event of breach of this Agreement by the Service Provider any claim by the Council in respect of such breach shall not be limited by the limits of indemnity of the insurance policies of the Service Provider referred to in the Tender.

17. **LIMITATION OF LIABILITY**

- 17.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Service Provider to the Council in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to £5,000,000 (FIVE MILLION POUNDS) for any one claim unless specifically stated to be otherwise in the Purchase Order or contract.

18. **LIABILITY OF THE COUNCIL**

- 18.1 The Council shall be liable to the Service Provider for any loss or damage to the Service Provider's property which is caused by negligence or wilful tortuous act of the Council or its servants during the course of their employment but not in any other way whatsoever and the Council shall in no circumstances be liable to the Service Provider for any economic or financial loss of any kind whatsoever which he sustains (other than the non-payment of sums which are or ought to have been certified as due to the Service Provider under the contract) in consequence of any breach of contract or tort committed by the Council which was unintentional and did not arise from any failure by the Council or its servants to exercise reasonable care.
- 18.2 In the absence of fraud the Council does not warrant the accuracy of any representation or statement which may have been made or any information or advice which may have been given to the Service Provider during the negotiations antecedent to this

Agreement by the Council, its servants or agents, whether in relation to fact or law, and the Council shall not be liable to the Service Provider for any loss or damage which the Service Provider may sustain as a result of relying on any such representation, statement, information or advice, whether in contract, tort, under the Misrepresentation Act 1967 or otherwise, save insofar as the relevant statement, representation, information or advice was made or given fraudulently by the Council or its servants or agents acting in the course of their employment.

19. **TERMINATION AND CANCELLATION**

19.1 Either party may terminate this Agreement forthwith by notice in writing to the other if:

- (a) the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement;
- (b) the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- (c) the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- (d) the other party ceases to carry on its business or substantially the whole of its business; or
- (e) the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

19.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement on giving not less than three months' written notice to the other party.

20. **TERMINATION BY THE COUNCIL**

20.1 If the Service Provider does any of the following, then in any such circumstances the Council may without prejudice to any accrued rights or remedies under this Agreement terminate the Service Provider's engagement under this Agreement by notice in writing, having immediate effect.

20.1.1 commits a breach of any of its obligations under this Agreement;

20.1.2 becomes bankrupt or makes a composition or arrangement with its creditors or being a company makes arrangements for the composition of debts or a scheme of arrangements approved in accordance with the Insolvency Act 1986;

20.1.3 has an application made under the Insolvency Act 1986 in respect of its company to the Court for the appointment of an administrative receiver.

20.1.4 has a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed;

20.1.5 has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;

20.1.6 has an administrative receiver as defined in the Insolvency Act 1986 appointed;

20.1.7 has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge;

20.1.8 is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver or manager or administrative receiver or which entitles the Court to make a winding up order;

20.2 The Council shall be entitled to cancel the contract and to recover from the Service Provider the amount of any loss resulting from such cancellation in any of the following circumstances:

20.2.1 If the Service Provider shall have offered or given or agreed to give any person any gift or consideration of any kind;

20.2.1.1 as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council, or

20.2.1.2 for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council.

20.2.2 If the like act shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Service Provider).

20.2.3 If in relation to any contract with the Council the Service Provider or any person employed by him or acting on his behalf shall have committed any offence under the Bribery Act 2010, or any amendment or re-enactment of them, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

20.3 The Council may terminate this Agreement by notice with immediate effect if the Service Provider materially breaches this Agreement and (if the breach is remediable) fails to remedy it within 28 days of receiving written notice requiring rectification of the breach from the Council.

20.4 Termination will not prejudice any other rights or remedies of the Council and will be without liability for any loss or damage suffered by the Service Provider in default.

21. **CONSEQUENCES OF TERMINATION**

21.1 If the Service Provider's engagement is terminated as provided herein the Council shall:

21.1.1 cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Service Provider's employment shall have been calculated and provided such calculation shows a sum or sums due to the Service Provider;

21.1.2 be entitled to employ and pay other persons to provide and complete provision of the Services or any part thereof;

21.1.3 be entitled to deduct from any sum or sums which would have been due from the Council to the Service Provider under this Agreement or any other agreement or be entitled to recover the same from the Service Provider as a debt any loss or damage to the Council resulting from or arising out of the termination of the Service Provider's engagement. Such loss or damage shall include the reasonable costs to the Council of the time spent by its officers in terminating the Service Provider's engagement and in making alternative arrangements for the provision of the Services or any part thereof;

21.1.4 when the total costs loss and/or damage resulting from or arising out of the termination of the Service Provider's engagement have been calculated and deducted so far as practicable from any sum or sums which would have been to the Service Provider be entitled to recover any balance shown as due to the Council as a debt or alternatively the Council shall pay to the Service Provider any balance shown as due to the Service Provider;

21.1.5 be entitled to terminate the Services by notice in writing with immediate effect.

22. **TERMINATION ON BREACH**

- 22.1 Either party shall be entitled to terminate this Agreement forthwith by notice in writing to the other if the other party shall commit any serious or persistent breach of any of its obligations hereunder and (in the case of a breach capable of being remedied) shall have failed within a reasonable time after the receipt of a written request so to do to remedy the breach (such request to contain a warning of the intention to terminate).

23. **EFFECT OF TERMINATION**

- 23.1 On the expiration or termination of this Agreement:

23.1.1 all rights and obligations of the parties under this Agreement shall automatically terminate except for such rights of action as shall have accrued prior thereto and any obligations which expressly or by implication are intended to come into or continue in force on or after such expiration or termination;

23.1.2 the Service Provider shall give the Council at its request all reasonable co-operation in transferring all sub-contracts made by the Service Provider hereunder to the extent that sub-Service Providers agree and provided that the Service Provider is fully released from its obligations in relation thereto.

24. **SEVERABILITY**

- 24.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid, illegal or unenforceable provision eliminated.

25. **WAIVER**

- 25.1 The failure by either party to enforce at any time or for any period any one or more of these General Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement.

26. **CONFIDENTIALITY**

- 26.1 The Service Provider shall not use or divulge or communicate to any person (other than those whose province it is to know the same or with the authority of the Council):

26.1.1 any confidential information concerning the products, staff, business, accounts, finance or contractual arrangements or other dealings, transactions or affairs of the Council which may come into the Service Provider's knowledge during the course of providing the Services;

26.1.2 any information concerning the Services or any of the Council's computer systems;

26.1.3 the substance of any report, recommendation, advice or test made, given or undertaken by the Service Provider in connection with its duties hereunder and the Service Provider shall use its best endeavours to prevent the unauthorised publication or disclosure of any such information or documents.

- 26.2 The Service Provider shall ensure that its employees, agents and subService Providers are aware of and comply with the confidentiality and non-disclosure provisions contained within this clause and the Service Provider shall indemnify the Council against any loss or damage whatsoever which the Council may sustain or incur as a result of any breach of confidence by any such persons.

- 26.3 If the Service Provider becomes aware of any breach of confidence by any of its employees, agents or subService Providers it shall promptly notify the Council and give the Council all reasonable assistance in connection with any proceedings which the Council may institute against such persons.

- 26.4 The provisions of this clause shall survive the expiration or termination of this Agreement but the restrictions contained in sub-clause 28.3 shall cease to apply to any information which may come into the public domain otherwise than through unauthorised disclosure by the Service Provider, its employees, agents or subService Providers.

- 26.5 The Service Provider shall permit the Council to disclose any information provided by the Service Provider to the Council to third parties if the Council is required to do so to comply with its statutory obligations

27. **DATA PROTECTION**

- 27.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 27 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 27.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the data controller and the Service Provider is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Schedule 3 sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, Personal Data) and categories of Data Subject.
- 27.3 Without prejudice to the generality of Clause 27.1, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this agreement.
- 27.4 Without prejudice to the generality of Clause 27.1, the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Service Provider of its obligations under this agreement: -
- 27.4.1 process that Personal Data only on the written instructions of the Council unless the Service Provider is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Service Provider to process Personal Data (Applicable Laws). Where the Service Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Service Provider shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Service Provider from so notifying the Council;
- 27.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 27.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 27.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
- (i) the Council or the Service Provider has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;

- (iii) the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Service Provider complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- 27.4.5 assist the Council, at the Council's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 27.4.6 notify the Council without undue delay on becoming aware of a Personal Data breach;
- 27.4.7 at the written direction of the Council, delete or return Personal Data and copies thereof to the Council on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 27.4.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 27.4 and allow for audits by the Council or the Council's designated auditor.
- 27.5 The Council consents to the Service Provider appointing third-party processors of Personal Data under this Agreement. The Service Provider confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Clause 27. As between the Council and the Service Provider, the Service Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 27.
- 27.6 Either party may, at any time on not less than 30 days' notice, revise this Clause 27 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

28. FREEDOM OF INFORMATION ACT 2000 (FOIA)

- 28.1 The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and shall assist and co-operate with the Council (at the Service Provider's expense) to enable the Council to comply with its Information Disclosure requirements.
- 28.2 The Service Provider shall and shall procure that its Sub-Service Providers shall:
 - 28.2.1 transfer all Requests for Information to the Council (where it is reasonably apparent that such are intended to be Requests for Information for the Council) as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;
 - 28.2.2 provide the Council with a copy of any Information 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
 - 28.2.3 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 the FOIA.

- 28.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 28.3.1 is exempt from disclosure in accordance with the provisions of the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 FOIA; or
 - 28.3.2 is to be disclosed in response to a Request for Information, and
 - 28.3.3 in no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 28.4 The Service Provider acknowledges that the Council may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOIA, be obliged to disclose Information:
- 28.4.1 without consulting with the Service Provider; or
 - 28.4.2 following consultation with the Service Provider and having taken its views into account.
- 28.5 The Service Provider 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.
- 28.6 The Service Provider acknowledges that any lists or schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 1.4.

29. **ANTI-BRIBERY AND CORRUPTION**

- 29.1 The Council may cancel the Agreement by way of a written notice with immediate effect and recover from the Service Provider the amount of any loss resulting from the cancellation if at any time it becomes known to the Council that the Service Provider or any person employed by the Service Provider or acting on his behalf whether with or without the knowledge of the Service Provider has:
- 29.1.1 offered, paid or given or agreed to give directly or indirectly any gift in money or any other form to any member, employee or agent of the Council as an inducement or reward in relation to the obtaining or execution of the Agreement or any other agreement with the Council; or
 - 29.1.2 favoured or discriminated against any person in relation to this or any other agreement with the Council; or
 - 29.1.3 in the reasonable opinion of the Council appears to have committed an offence in relation to any agreement with the Council under the Bribery Act 2010 or Section 117(2) Local Government Act 1972 (as amended).

30. **WHISTLEBLOWING**

- 30.1 The Service Provider shall be aware of and adhere to the principles set out in the Council's whistleblowing policy in reporting concerns which arise during the term of the Agreement and shall ensure that its agents and sub-Service Providers do the same. The Council's whistleblowing policy can be accessed on the Council's website at www.dorsetcouncil.gov.uk.

31. **EXPIRY**

- 31.1 The Service Provider will, on the expiry or termination of the Agreement and at its own cost, return (or at the request of the Council destroy) all information obtained in undertaking the performance of the Agreement.

32. **AUDIT AND MONITORING**

- 32.1 The Service Provider will allow access for the Council's officers to all relevant information for the purposes of audit and monitoring of the Agreement.

33. **NOTICES**

- 33.1 Unless otherwise communicated to the party in writing any notice to be given by either party to the other may be served by e-mail, personal service or by post to the address of the other party that is the registered office or main place of business of the Service Provider or if the Council, Dorset Council, South Walks House, South Walks Road, Dorchester, Dorset DT1 1UZ.
- 33.2 A notice sent by e-mail shall be deemed to be received providing receipt is acknowledged and confirmed. Notice given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by second class post shall be deemed to have been delivered in the ordinary course of post and if by first class post shall be deemed to have been delivered 48 hours after posting and acknowledged.

34. **INSURANCE**

- 34.1 The Service Provider shall maintain a comprehensive policy of public liability and employer's liability insurance. In respect of its liability such insurance cover to be maintained and provide for a minimum of £5,000,000 (FIVE MILLION POUNDS). Cover in respect of death or personal injury due to negligence will be unlimited.
- 34.2 If appropriate and requested in writing, the Service Provider may also be required to provide professional indemnity insurance of at least £1,000,000 (ONE MILLION POUNDS) cover for any one claim, a valid policy or policies or employer's liability insurance with a minimum level of indemnity of £10 million for any one claim in respect of all sums the Service Provider is found legally liable to pay for injury, illness or disease suffered by an employee of the Service Provider acting in the course of his duties; and the Service Provider shall provide the Council with certified copies of the relevant policies upon request.

35. **EQUAL OPPORTUNITIES**

- 35.1 The Service Provider and any sub Service Provider's employed by the Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, age or disability:
- (a) in the supply and provision of services under this Agreement, and
 - (b) in its employment practices.
- 35.2 Without prejudice to the generality of the foregoing, the Service Provider and any sub Service Provider employed by the Service Provider shall not unlawfully discriminate

within the meaning and scope of the Equality Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.

- 35.3 The Service Provider and any sub Service Provider employed by the Service Provider will take all reasonable measures to observe as far as possible the Codes of Practice produced by the Equality and Human Rights Commission, which give practical guidance to employers on the elimination of discrimination.
- 35.4 In the event of any finding of unlawful discrimination being made against the Service Provider or any sub Service Provider employed by the Service Provider during the contract period by any court or employment tribunal, or any adverse finding or formal investigation by the Equality and Human Rights Commission over the same period, the Service Provider shall inform the Council of this finding and shall take appropriate steps to avoid repetition of the unlawful discrimination.
- 35.5 The Service Provider and any sub Service Provider employed by the Service Provider shall provide a copy of its policies to the Council at any time upon request. In addition, the Council may reasonably request other information from time to time for the purpose of assessing the Service Provider's compliance with the above conditions.
- 35.6 Where the Service Provider commits a breach of Clause 35.1, the Council may forthwith determine this Agreement. Such determination shall be without prejudice to any other rights and remedies which the Council may possess.
- 35.7 The Service Provider shall notify the Council forthwith in writing as soon as it becomes aware of any investigation or of proceedings brought against the provider under the Equality Act 2010, or any other relevant legislation.
- 35.8 The Service Provider shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) and such other financial redress to cover any payments the Council may have been ordered or required to pay to a third party arising out of or in connection with any investigation or proceedings under the Equality Act 2010 (or any other equal opportunities legislation) which arise directly or indirectly out of any act or omission of the provider or its staff.
- 35.9 The Service Provider and all persons employed by the Service Provider to perform the Agreement shall comply with the Council's own employment policy and codes of practice relating to racial discrimination and equal opportunities, or, provided that the provider's employment policy and code of practice are provided to the Council and it agrees that the policies provide equal opportunities protection equivalent to or greater than the policies of the Council, the provider shall comply with its own policies and codes of practice in connection with the performance of this Agreement.

36. **HUMAN RIGHTS**

- 36.1 The Service Provider shall where appropriate take account of the Human Rights Act 1998 and not do anything in breach of it.

37. **HEALTH AND SAFETY**

- 37.1 The Service Provider shall at all times adopt safe methods of work and comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, regulations or orders appertaining to the health and safety of employees of the Council and of all other persons including members of the public.

- 37.2 The Service Provider shall nominate and notify to the Council a person to be responsible for health and safety matters, as required by the Act. Whilst on Council owned premises the Service Provider shall require his staff to comply with the Council's safety policy and the lawful requirements of the Council's safety advisers.
- 37.3 The Service Provider warrants that whilst carrying out their obligations under this Agreement all personnel supplied, whether by itself or by subService Providers shall not, save by express agreement of the Council, perform any work for any other person.
- 37.4 The Service Provider will at all times in providing services to the Council comply with the provisions of the Health and Safety at Work Act 1974 and provide evidence of doing so to the Council at any time upon request.

38. **AGENCY**

- 38.1 The Service Provider is an independent Service Provider and nothing in this Agreement shall render it an agent or partner of the Council and the Service Provider shall not have any right or power to bind the Council to any obligations.

39. **INTELLECTUAL PROPERTY RIGHTS**

- 39.1 The Service Provider will arrange, at no expense to the Council, to settle or defend and pay damages or costs resulting from any claim brought against the Council that the use of any licensed program, documentation or service materials within the scope of a licence infringes or has infringed a copyright or any other intellectual property right effective in the United Kingdom, provided that the Council:
- 39.1.1 promptly notifies the Service Provider in writing of any such claim, and
 - 39.1.2 permits the Service Provider to control the defence and settlement of any such claim.
- 39.2 In the event that such a claim has been made or is likely to be made, the Service Provider may at its option and expense:
- 39.1.1 procure the right for the Council to continue using any affected item or
 - 39.1.2 modify it so that it becomes non-infringing or
 - 39.1.3 replace any of it so that there is no infringement.
- 39.3 Notwithstanding the above, the Service Provider shall have no liability under this Clause 39 for any claim to the extent that it arises from:
- 39.3.1 the alteration or modification of any licensed programme
 - 39.3.2 the use of other than a current unaltered release of any licensed programme where the use of the current unaltered release would have avoided the claim
 - 39.3.3 the combination, operation or use of any licensed programme with equipment, data or programmes not supplied by the Service Provider
 - 39.3.4 the use of a licensed programme in other than the applicable specified operating environment.

40. **DISPUTE RESOLUTION**

- 40.1 If any dispute or difference of any kind whatsoever shall arise between the Council and the Service Provider in connection with or arising out of this Agreement or the carrying out of the Services (whether during the process of the Agreement or after its completion and whether before or after termination, abandonment or breach of this Agreement) both Parties agree that they will enter negotiations facilitated by a mediator and make genuine attempts to resolve the dispute. If the attempts to resolve the dispute by mediation fail, the dispute will be referred to the arbitration and final decision of a person to be agreed between the parties. If the Parties cannot agree the identity of the arbitrator within 10 (ten) Working Days of either Party proposing at least two possible appropriate arbitrators to the other, the arbitrator is to be appointed by the Chartered Institute of Arbitrators on the application of either Party. The arbitration shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force. The fee of the Arbitrator for so acting shall be borne by the parties in equal shares unless the Arbitrator determines that the conduct of either party is such that such party should bear all of the fees.

41. **RIGHTS OF THIRD PARTIES**

- 41.1 No person who is not a party to this Agreement shall have any right to enforce any term of this Agreement which such person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

42. **ENTIRE AGREEMENT**

- 42.1 This Agreement together with the Tender document forms the entire agreement between the parties relating to the subject matter. This Agreement supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

43. **DELAY**

- 43.1 Neither party shall be liable for any delay in performing any of its obligations under this Agreement if such delay is caused by circumstances beyond the reasonable control of the party so delaying, and such party shall be entitled (subject to giving the other party full particulars of the circumstances in question and to using its best endeavours to resume full performance without avoidable delay) to a reasonable extension of the time for the performance of such obligations.

44. **FORCE MAJEURE**

- 44.1 Neither party shall be liable for any delay in, or non-performance of, any obligation under the Contract (other than the payment of money) caused by an event beyond the reasonable control of that party including but not limited to acts of God, war, explosion, fire, strike, flood, riot or civil commotion or any act or omission of the other party, or a force majeure event affecting a supplier, sub-contractor or a third party.
- 44.2 In the event such circumstances persist beyond a reasonable period given the nature of the event and its effect on the obligations under this Contract, then the other party shall have the right, for so long as the circumstances which prevent performance

continue, to terminate this Contract by giving not less than 30 (thirty) Working Days' written notice to the other party.

45. **PUBLICATION OF SPEND**

45.1 The Service Provider hereby confirms that it:

45.1.1 understands that local authorities are required by the Government to publish details of all spending over £500, including details of contracts and tenders over £500; and

45.1.2 agrees that the Council and Other Authorities may therefore publish details (to the extent and in the manner required by the Government) of their contract with the Service Provider; and

45.1.3 that it will comply with any reasonable request from the Council or Other Authorities in order to assist the Council or Other Authority in complying with its obligations in respect of this requirement.

46. **SERVICE CONTINUITY**

46.1 The Service Provider shall have contingency arrangements in place, as approved by the Council, to ensure continuity of the Services at all times at no extra cost to the Council. These shall include, but not be limited to, arrangements to deal with staff absences.

46.2 The Service Provider shall demonstrate, on request by the Council for the duration of the contract, that it has adequate business continuity plans and associated contingency arrangements in place to ensure minimum disruption in the provision of any part of the Services in the event of a major incident affecting its ability to provide the Services, including an insolvency event affecting the Service Provider or any key sub-Service Provider, such plans and arrangements being appropriate to the scale of the Service Provider's commitments under the contract.

46.3 The Council reserves the right to request detailed evidence of contingency plans, such as sight of the Service Provider's business continuity plan and evidence of the testing of the plan, and to require review and/or amendment of the plan and any other contingency arrangements to meet the Council's requirements and in any event the Service Provider shall review the plans as a minimum every six months.

47. **GOVERNING LAW AND JURISDICTION**

47.1 This contract is subject to the law of England and Wales.

47.2 It is the responsibility of the Service Provider to comply with all relevant European and English legislation. This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English and Welsh Courts.

47.3 All disputes arising out of this contract shall be subject to the jurisdiction of the Courts of England and Wales.

48. **MODERN SLAVERY ACT 2015**

48.1 The Service Provider warrants and undertakes that in performing its obligations under the terms of this Agreement, it will:

48.1.1 comply with the Modern Slavery Act 2015; and

48.2.2 not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015; and

48.2.3 include in its subcontracting arrangements provisions that are at least as onerous as those set out in this clause 48.9

48.2 The Service Provider warrants that neither it nor any of its officers, employees, agents or sub Contractor has:

48.2.1 committed an offence under the Modern Slavery Act 2015 ('a MSA Offence'); or

48.2.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

48.2.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA offence or prosecution under the Modern Slavery Act 2015.

49. **IR35 RULES AND EMPLOYMENT STATUS**

49.1 The Provider agrees to notify the Purchaser as soon as reasonably practicable in the event of a change in the employment status of the Provider during the period of the Agreement within the meaning of Part 2 Chapter 8 of the Income Tax (Earnings and Pensions) Act 2003 ('the IR35 Rules') and to provide all such information regarding the same as may be reasonably requested by the Purchaser.

49.2 The Provider shall indemnify the Purchaser fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising from the Provider's failure to comply with Clause 48.1.

50. **ELECTRONIC EXECUTION OF CONTRACT**

50.1 The Parties agree that:

50.1.1 for the purposes of the execution of this Contract, an electronically affixed seal and/or electronic signature (duly attested/authenticated/witnessed in accordance with the relevant execution block) shall be accepted by each party in lieu of a wet-ink signature and/or physically affixed seal (as applicable) for the purposes of the lawful execution of this Contract; and

50.1.2 this Contract may be electronically dated; and

50.1.3 further to execution of this Contract each party may accept a electronic copy of the executed Contract in lieu of a hardcopy document; and

50.1.4 without limitation 'electronic signature' shall include an electronically scanned and transmitted version (e.g. via pdf) of an original signature or transmission by any other electronic means.

51. TUPE

- 51.1 At any time during the last twelve months of the Contract Period, the Provider shall provide to the Purchaser within 20 Working Days of a written request such information as the Purchaser may reasonably require in respect of TUPE.
- 51.2 The Provider shall comply with its obligations under Clause 11 in relation to any information supplied under Clause 44.1.
- 51.3 The Provider shall permit the Purchaser to use the information for the purposes of TUPE and re-tendering.
- 51.4 If TUPE applies on termination of this Contract then:-
 - 51.4.1 the Provider agrees to indemnify the Purchaser fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of the information under Clause 44.1;
 - 51.4.2 the Provider agrees to indemnify the Purchaser from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities in connection with, or as a result of, any claim or demand by any Personnel or other personnel or person claiming to be an employee of the Provider on any date upon which the Contract expires or is terminated and/or transferred to any third party (Relevant Transfer Date) arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
- 51.5 In the event that the information provided by the Provider in accordance with Clause 44.1 becomes inaccurate, whether due to changes to the employment and personnel details of the affected Personnel made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate, the Provider shall notify the Purchaser of the inaccuracies and provide the amended information within 10 Working Days.
- 51.6 The provisions of this Clause shall apply during the continuance of this Contract and indefinitely after its termination.

52. NOTICES

- 52.1 Any notice to be given under this Contract shall be in writing and shall be hand delivered or sent by first class mail to the address of the Provider or the Purchaser at the address set out at the head of this Contract, or such other address as that party may from time to time notify to the other party in accordance with this Clause.
- 52.2 Provided the notice sent as above is not returned as undelivered it shall be deemed to have been received:
 - 52.2.1 if delivered by hand before 4.00 pm on a Working Day, at the time of delivery, otherwise receipt shall be deemed to occur at 9.00 am on the next following Working Day; or
 - 52.2.3 if delivered by first class inland mail, two Working Days after the day of posting.
- 52.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted.
- 52.4 Notice shall not be given by email.

AS WITNESS the hands of the duly authorised representatives of the parties to this Agreement
on the day and year first before written

SIGNED on behalf of DORSET COUNCIL

Signed.....

Print Name.....

Position.....

SIGNED on behalf of XX XXX

Signed.....

Print Name.....

Position.....

SCHEDULE 1

SPECIFICATION

SCHEDULE 2

PRICE AND PAYMENT

SCHEDULE 3

Processing, Personal Data and Data Subjects

N/A