

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

1. DEFINITIONS

Confidential Information means all information provided by one Party to the other which is clearly confidential or ought reasonably to be considered confidential;

Contract means these terms and conditions of supply;

Council means Dorset Council;

Date of Delivery means the date by which the Goods and/or Services must be delivered to the Council as specified in the Order;

Delivery means the supply of the Goods and/ or Services to the Council at the address and on the date specified in the Order. 'Delivered' and 'Delivery' will be interpreted accordingly;

Goods and/or Services means the goods and/or services to be supplied by the Supplier to the Council under the Contract in accordance with the Council's Order;

Order means the Council's written order for the Goods and/or Services as set out in the Council's purchase order form, including any Specification.

Party or Parties means the Council or the Supplier as appropriate and 'Parties' will mean both of them;

Price means the price (exclusive of any applicable VAT) payable to the Supplier by the Council under the Contract for the delivery of the Goods and/or Services in accordance with the Order and any Specification;

Specification means the written specification, if any, for the Goods and/or Services (including as to quantity, description and quality) provided to the Supplier by the Council and forming part of the Contract;

Staff means all employees, agents, consultants, contractors and volunteers of the Supplier and/or of any sub-contractor of the Supplier engaged in the supply of the Goods and/or Services;

Supplier means the individual, company, or other legal person supplying the Goods and/or Services to the Council;

Term means the start date of the Contract to the expiry date, as agreed in writing by the Parties, or as terminated in accordance with

the law or the terms of the Contract, and including any period of extension as may be agreed in writing between the Parties;

Working Days means Monday to Friday inclusive but excluding bank holidays and public holidays.

2. INTERPRETATION

In this Contract, unless the context makes clear that this is not what is intended:

- words importing the singular include the plural and vice versa;
- headings are for reference only and not interpretation;
- references to statutory provisions include any provision that amends, replaces or supplements them;
- references to numbered clauses are references to the relevant clause in the Contract.

3. GENERAL

This Contract specifies the terms on which the Council will contract with the Supplier for the supply of the Goods and/or Services. The Council is not bound by any standard or printed terms provided by the Supplier or by any trade, practice or custom, unless the Council has expressly accepted in writing that such terms may apply in the place of the Contract.

Each of the Parties represents and warrants that it has full capacity and authority and all necessary consents, licences and permission to enter into and perform its obligations under the Contract.

4. VARIATION

Neither the Council nor the Supplier will be bound by any variation to the Contract except as agreed in writing by both Parties.

The Council may by written notice to the Supplier request a variation to the scope of the Goods and/or Services. In the event that the Supplier agrees to any such variation, the Price will be subject to fair and reasonable adjustment to be agreed in writing between the Council and the Supplier. In the absence of agreement, the dispute resolution procedure at clause 22 will apply.

5. SUPPLY OF GOODS AND SERVICES

In consideration of the Council's agreement to pay the Price, the Supplier will provide the Goods and/or Services to the Council for the Term in accordance with the Contract:

- 5.1 with such reasonable skill, care and diligence as may be expected of a competent provider of such Goods and/or Services;
- 5.2 in accordance with the Specification and any applicable laws and obligations relating to description, quality and fitness for purpose set out in the Specification or implied by sections 12 or 14 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982 and all other legislation and specifications applicable to the provision of the Goods and/or Services;
- 5.3 in accordance with any timetable stipulated by the Council.

The Supplier will provide all equipment, tools and vehicles and other items as are required to provide the Goods and/or Services which shall at all times be maintained in a safe and serviceable condition.

6. CANCELLATION OF GOODS

The Council retains the right to cancel an Order for Goods, or any part of the Goods, which have not yet been Delivered to the Council. The cancellation will be in writing. Without prejudice to the generality of the foregoing, the Council will pay such Price for that part of the Price for Goods which have been Delivered to the Council, or on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the Order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt, the Council will not be liable under this clause for any loss of anticipated profits or any consequential loss.

7. DELIVERY OF GOODS

The Supplier will Deliver the Goods to the Council, carriage paid, on or by the Date of Delivery. Unless otherwise agreed in writing by the Council, Delivery will be on the date and to the address specified in the Order. Delivery of the Goods will be complete once the completion of unloading the Goods at the Delivery address has taken place and an Authorised Officer of the Council has signed for the Delivery.

Delivery of the Goods will be accompanied by a delivery note which shows the purchase order number and the type and quantity of the Goods.

Unless otherwise stipulated by the Council, Delivery will only be accepted by the Council on Working Days during normal business hours.

Where the Supplier fails to Deliver the Goods or part of the Goods, or the Goods or part of the Goods do not comply with the provisions of clause 5, then without limiting any of its other rights or remedies implied by statute or common law, the Council will be entitled to i) terminate the Contract; ii) request the Supplier free of charge to Deliver substitute Goods within the timescales specified by the Council iii) require the Supplier free of charge to repair or replace the rejected Goods or provide a full refund of the Price of the rejected Goods; iv) reject the Goods in whole or in part and return them to the Supplier at the Supplier's own risk and expense and the Council will be entitled to a full refund on those Goods or part of Goods duly returned; or v) buy the same or similar Goods from another supplier, and recover any expenses incurred in buying goods from another supplier which will include but not be limited to administration costs, chargeable staff time and extra delivery costs.

8. PROPERTY AND GUARANTEE OF TITLE IN GOODS

Without prejudice to any other rights or remedies of the Council, title and risk in the Goods will pass to the Council when Delivery of the Goods is complete in accordance with clause 7. The Supplier warrants that it has full, clear and unencumbered title to the Goods and, at the Date of Delivery of any of the Goods, it will have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Council. On Delivery, the Council will acquire valid and unencumbered title to the Goods.

9. GUARANTEE PERIOD

The Supplier warrants to the Council that the Goods will continue to comply with the Contract for a period of 12 months from the Date of Delivery and will on demand by the Council replace any Goods or any part of the Goods stated in writing by the Council to have failed to comply with the Contract.

10. AUTHORISED OFFICERS

The Parties will each appoint an authorised officer (the 'Authorised Officer') who will have full authority to represent that Party in all matters pertaining to the Contract. The Parties will notify the other of any changes to the Authorised Officer. The Parties will ensure that their Authorised Officers meet on a regular basis to ensure the smooth running of the Contract and to identify concerns early enough to prevent disputes arising.

11. USE OF COUNCIL'S PREMISES AND EQUIPMENT

If relevant, the Council will enable the Supplier to gain access to the Council's premises at any reasonable time for the purpose of supplying the Goods and/or Services. All equipment, tools and vehicles brought onto the Council's premises by the Supplier will be at the Supplier's risk.

If the Supplier supplies all or any of the Services from the Council's premises, on completion of the Services or on termination or expiry of the Contract, the Supplier will promptly vacate the Council's premises, remove the Supplier's equipment, materials and rubbish and leave the Council's premises in a clean, safe and tidy condition. The Supplier will be responsible for making good any damage to the Council's premises or any objects on the premises which is caused by the Supplier, other than through fair wear and tear.

The Council will be responsible for maintaining the security of its premises. While on the Council's premises, the Supplier's Staff will comply with the Council's security requirements at all times.

Any equipment which the Council may agree to provide to the Supplier for the purposes of the Contract will remain the property of the Council and will be used by the Supplier's Staff only for the purpose of carrying out the Contract. Such equipment will be returned promptly to the Council on termination or expiry of the Contract.

The Supplier will reimburse the Council for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier's Staff.

12. STAFF

The Supplier will supply the Goods and/or Services using suitably qualified Staff who are at all times entitled to work in the United Kingdom, are fit, competent and fully trained to supply the Goods and/or Services and in sufficient number to ensure that the Goods and/or Services are provided at all times in accordance with the requirements of the Contract.

If the Council believes that any of the Supplier's Staff are unsuitable to deliver the Goods and/or Services, it may, acting reasonably and by giving written notice to the Supplier, refuse admission to the relevant person to the Council's premises, direct the Supplier to end the involvement of the relevant person in the provision of the Goods and/or Services and require the Supplier to replace any person removed with another suitably qualified person, and the Supplier will comply with any such notice.

The Supplier will, if requested in writing, provide the Council with the names and addresses, and any other relevant information, of all

persons who may require admission to the Council's premises in connection with the Contract and procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.

13. DISCLOSURE AND BARRING SERVICE CHECKS

The Council may, if relevant, and in accordance with its criminal records checking policy, require the Supplier to ensure that any person employed in the provision of the Goods and/or Services has undertaken, at its own cost, a Disclosure and Barring Service check at a level specified by the Council. The Supplier will ensure that no person who discloses that he or she has a conviction that is relevant to the nature of the Goods and/or Services, relevant to the work of the Council, or is of a type otherwise advised by the Council (each such conviction a 'Relevant Conviction'), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Goods and/or Services.

14. PRICE

In return for the Supplier providing the Goods and/or Services in accordance with the Contract, the Council will pay the Supplier the Price as set out in the Order. The Price is fixed for the Term unless otherwise confirmed by the Council in writing. The Price does not include VAT which if applicable will be paid by the Council to the Supplier at the prevailing rate in addition to the Price. The Price will include every cost and expense of the Supplier incurred in connection with the provision of the Goods and/or Services.

Should the Supplier consider it has a compelling case for an increase in the Price, it may seek to discuss it with the Council having first submitted detailed evidence for the increase and transparent open book calculations demonstrating how such increase has been calculated. The Council does not commit to agree to any increase in the Price nor will it pay any increase in the Price which it has not agreed. The Supplier agrees that the continued provision of the Goods and/or Services does not imply the Council's agreement to a Price increase. The Supplier will obtain the Council's prior written agreement to any increase in the Price and as to when such increase, if agreed, is implemented.

15. PAYMENT

Subject to the Supplier having met all its obligations under the Contract, the Council will pay the Price for the Goods and/or Services within 30 days of receipt of a correct invoice from the Supplier bearing the purchase order number, which invoices will be sent electronically to the Accounts Payable Team at the Council as instructed on the Order.

Failure to quote the purchase order number may delay payment and result in the invoice being returned to the Supplier. The Supplier will ensure they are in receipt of the purchase order number before the Goods and/or Services are supplied.

The Council may, without prejudice to any other rights and remedies under the Contract, withhold payment or reduce the Price on reasonable notice in the event of unsatisfactory performance.

If payment of the undisputed Price is not made by the Council by the due date, the Council will pay the Supplier interest at the rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

If any sum of money is recoverable from or payable by the Supplier under the Contract (including any sum which the Supplier is liable to pay the Council in respect of any breach of the Contract) that sum may be deducted unilaterally by the Council from any sum then due or which may become due to the Supplier under the Contract or under any other agreement or contract with the Council.

16. MONITORING AND INSPECTION OF SERVICES

The Supplier will allow the Council's Authorised Officer to inspect and observe the performance of the Services and to investigate complaints at all reasonable times on reasonable prior notice.

The Supplier will attend meetings with the Council on reasonable notice, as required. The Supplier will meet its own costs in attending such meetings.

The Supplier will meet any key performance indicators set by the Council for the performance of the Supplier's obligations under the Contract and provide any management information that the Council may require to monitor performance of the Contract.

17. RECORDS

The Supplier will maintain until six years after the Contract has been completed full and accurate records of the Contract and the Goods and/or Services provided under it, any expenditure reimbursed and any payments made by the Council. The Supplier will on reasonable notice afford the Council, including its auditors, access to such records as may be required by the Council in connection with the Contract.

18. CONFIDENTIALITY, FREEDOM OF INFORMATION AND PUBLIC ANNOUNCEMENTS

The Supplier and its Staff will ensure that all Confidential Information obtained under or relating to the Contract is only used for the purposes

of the Contract and will not be disclosed to anyone else except as permitted by the Contract.

The confidentiality obligations under this clause will not apply to any Confidential Information which is required to be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirement for disclosure under the Freedom of Information Act 2000.

The Supplier will not make any press announcements or publicise the Contract except with the prior written consent of the Council.

The Supplier recognises that the Council is subject to the Freedom of Information Act 2000 (FOIA) and will co-operate with and assist the Council at its own expense to enable the Council to meet its information disclosure obligations under the Act. In particular, the Supplier will transfer all requests for information to the Council within 2 Working Days of receiving a request for information and provide the Council with a copy of any information in its possession in the form that the Council requires within 5 Working Days of the Council requesting that information.

The Council will not provide commercially sensitive information to a third party under the Act unless prior to such disclosure the Council has informed the Supplier of the request for such information and given the Supplier the opportunity to make representations about what material should be disclosed. The Council will be responsible for determining in its absolute discretion whether any information relating to the Supplier or to the Goods and/or Services is exempt from disclosure in accordance with the FOIA.

The provisions of this clause will survive the termination or expiry of the Contract for a period of 10 years.

19. DATA PROTECTION

The Supplier will comply with the provisions of Schedule 1 in so far as it relates to the Goods and/or Services provided under the Contract.

20. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights in any materials provided by the Council to the Supplier for the purposes of the Contract will remain the property of the Council but the Council grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of the Contract.

All intellectual property rights in any materials created or developed by the Supplier to meet the requirements of the Contract will vest in the

Supplier. So far as may be necessary for the Council to be able to continue to use the Goods or provide the Services after termination or expiry of the Contract, the Supplier will grant to the Council a non-exclusive, perpetual, irrevocable royalty free licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed to meet the requirements of the Contract.

The Supplier will indemnify the Council in full against all costs, expenses, damages and losses (whether direct or indirect) awarded against or incurred or paid for by the Council as a result of, or in connection with, any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of the supply of the Goods and/or Services.

The provisions of this clause will survive the termination or expiry of the Contract for a period of 6 years.

21. BREACH

If either Party fails to fulfil its obligations under the Contract (a 'Breach'), the other Party may serve on it a Breach Notice which specifies the Breach, the remedial action to be taken and the time within which such action must be taken.

On receipt of a Breach Notice the Party at fault will remedy the Breach within the time specified in the Breach Notice.

Failure to remedy the Breach may be actioned by either Party under clause 27.

22. DISPUTE RESOLUTION

Any dispute arising in connection with the Contract will first be addressed by direct personal contact between the Authorised Officers. If the dispute has not been resolved by the Authorised Officers within 10 Working Days, the matter will be referred to be resolved by direct contact between more senior officers representing both Parties.

If the dispute has not been resolved by such senior officers within a further 10 Working Days, the matter may be referred at the option of either Party within a further 10 Working Days to mediation in accordance with the model mediation procedure for the time being of the Centre for Effective Dispute Resolution.

If the dispute is referred to the Centre for Effective Dispute Resolution, the Parties will engage with the model mediation procedure in good faith.

This clause will not apply after a notice of termination has been served in accordance with clause 27.

23. FORCE MAJEURE

Neither Party will be liable for any delay in performing any of its obligations under the Contract if such delay is caused by circumstances beyond its reasonable control ('a Force Majeure Event'). A Party experiencing a Force Majeure Event will promptly notify the other Party in writing when such circumstances arise and use all reasonable endeavours to resume performance as soon as possible. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Contract by written notice to the other Party.

24. LIABILITY AND LIMITATION OF LIABILITY

Subject to the provisions of this clause, each Party will indemnify the other in full, from and against all losses, damages, costs, expenses, liabilities, claims or proceedings arising out of, or in respect of, or in connection with the Contract caused directly by its act or omission.

Except in respect of fraud or death or personal injury caused by the negligence of the Party at fault (for which no limitation applies) neither Party will be liable to the other for any loss of profit, loss of business, loss of revenue, loss of anticipated savings or loss of use or value or any indirect, special or consequential loss however arising.

Except in respect of death or personal injury, the entire liability of each Party under or in connection with the Contract will not exceed a sum equal to 125% of the Price paid or payable to the Supplier in respect of the year in which such liability arose.

The Supplier's liability in the event of any infringement of third party intellectual property rights or a breach of the Data Protection Legislation in the supply of the Goods and/or Services will be unlimited.

25. INSURANCE

The Supplier will take out and maintain insurance appropriate to the provision of the Goods and/or Services, to at least the statutory required limit. The Supplier will provide to the Council on request copies of the insurance policies and evidence that they are in force.

26. COMPLIANCE

The Supplier will comply with the Health and Safety at Work etc. Act 1974 and with the Council's health and safety measures while on the Council's premises and notify the Council immediately in the event of any incident on the Council's premises giving rise to personal injury or damage to property. The Supplier will promptly notify the Council of

any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

The Supplier will perform its obligations under the Contract in accordance with all applicable equality legislation and take all reasonable steps to secure the observance of such by all Staff.

The Supplier will not offer, give or agree to give anything to any person an inducement or reward for doing, refraining from doing or for having done or refrained from doing any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.

The Supplier will take all reasonable steps to prevent fraud by its Staff and the Supplier in connection with the Contract and will notify the Council immediately if it has reason to suspect that any fraud has occurred or is likely to occur.

27. TERMINATION

The Council may terminate the Contract at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Contract is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

Either Party may terminate the Contract immediately by written notice if the other Party has: i) committed a fundamental Breach of the Contract; ii) committed a Breach and has not remedied the Breach as required by clause 21 or iii) committed a Breach which is not capable of remedy.

The Council may terminate the Contract immediately by written notice in the event that the Supplier becomes insolvent, or if any order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction) or if an administrator or administrative receiver is appointed in respect of all or part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.

The Council may terminate the Contract by written notice with immediate effect if the Supplier undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 which impacts adversely and materially on the performance of the Contract. The Council may only exercise this right within 3 months after receiving written notice giving full details of the change of control.

The Council may terminate the Contract immediately by written notice if the Supplier or its Staff commit an offence under the Bribery Act 2010 or section 117(2) of the Local Government Act 1972.

The Supplier may terminate the Contract by written notice to the Council if the Council has not paid any undisputed amount within 90 days of it falling due.

28. CONSEQUENCES OF TERMINATION

Termination of the Contract will not affect any right of either Party that has arisen before termination.

Any provision of the Contract that is expressly or by implication intended to have effect after termination will continue in force for the intended period.

On termination or expiry of the Contract, the Supplier will give all reasonable assistance to the Council and any incoming supplier and return all requested documents, information and data to the Council as soon as reasonably practicable.

29. ASSIGNMENT AND SUB-CONTRACTING

The Supplier will not assign, novate, sub-contract or in any way dispose of the benefit or burden of the Contract without the prior written consent of the Council.

If the Supplier sub-contracts its obligations under the Contract, it will nevertheless be liable for the performance of its sub-contractor. Sub-contracting any part of the Contract will not relieve the Supplier of any obligation or duty owed to the Council under this Contract.

Where the Supplier enters into a sub-contract for the purpose of performing its obligations under the Contract, it will ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

The Council may assign, novate or otherwise dispose of its rights and obligations under the Contract without the consent of the Supplier.

30. NOTICES

Any notice to be given by either Party to the other under the Contract will be in writing and may be personally delivered or sent by first class post to the address of the other Party as set out on the Order or as otherwise notified in writing.

Provided the notice is not returned, it will be deemed to have been received if delivered by hand before 4pm on a Working Day, at the time of delivery, otherwise receipt will be deemed to occur at 9am on the next following Working Day, or, if delivered by first class mail, 2 Working Days after the day of posting.

In proving the giving of a notice, it will be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted.

The Supplier may not give notice by email.

31. WAIVER

Failure by either Party to insist on strict performance of the Contract or to exercise any right or remedy on Breach of any provision of the Contract will not constitute a waiver of the Contract or a waiver of any subsequent Breach in the performance of the Contract.

The rights and remedies provided in this Contract are cumulative and not exclusive of any rights and remedies provided by law.

32. SEVERABILITY

If one or more of the provisions of this Contract are or become to any extent invalid or unenforceable under any applicable law, then the remainder of the Contract will continue in full force and effect.

If this happens, both Parties will negotiate in good faith to amend the provision concerned in such a way that as amended it is valid and enforceable and to the maximum extent possible meets the original intention of the Parties.

33. STATUS OF THE PARTIES

The Supplier is an independent contractor and the Contract is not intended to, nor will it create, any agency, partnership or joint venture.

Neither Party will hold itself out as being entitled to represent or bind the other in any way.

34. THIRD PARTY RIGHTS

The Contract does not and is not intended to provide any third party with any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

35. PUBLIC AUTHORITY FUNCTIONS

Nothing in the Contract will prejudice or affect the rights, powers, duties and obligations of the Council in relation to the exercise of the Council's functions as a public authority.

36. TUPE

At any time during the last 6 months of the Term, the Supplier will provide to the Council within 10 Working Days of a written request, such information as the Council may reasonably require in respect of TUPE. The Supplier will comply with its confidentiality obligations in relation to any information supplied and will permit the Council to use the information for the purposes of TUPE and re-tendering.

If TUPE applies on termination of this Contract, the Supplier agrees to indemnify the Council 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 employee liability information and the Supplier agrees to indemnify the Council 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 Staff or other personnel or person claiming to be an employee of the Supplier on any date upon which the Contract 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.

In the event that the information provided by the Supplier becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier will notify the Council of the inaccuracies and provide the amended information within 10 Working Days.

The provisions of this clause will survive the termination or expiry of the Contract for a period of 6 years.

37. IR35 RULES AND EMPLOYMENT STATUS

The Supplier agrees to notify the Council as soon as reasonably practicable in the event of a change in the employment status of the Supplier during the period of the Contract within the meaning of Part 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 Council.

The Supplier will indemnify the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising from the Supplier's failure to comply with this clause.

38. MODERN SLAVERY

The Supplier warrants and undertakes that in performing its obligations under the Contract it will comply with the Modern Slavery Act 2015 and not engage in any activity, practice or conduct that would constitute an offence under the Act. The Supplier will include in its sub-contracting arrangements provisions that are at least as onerous as those set out in this clause.

39. CHANGE IN LAW

The Supplier will not be relieved of its obligations to supply the Goods and/or Services under this Contract as a result of a change in law if the change and its effect are known at the beginning of the Term.

If a change in law occurs or is shortly to occur which will significantly affect the provision of the Goods and/or Services including the cost of doing so, the Supplier will notify the Council to express an opinion of the likely effects of the change including whether any change is required to the Goods and/or Services or the Contract and whether the Supplier requires any relief from compliance with its obligations.

If the Parties agree upon the effects of the change in law and any financial consequences, such agreement will be implemented through the variation provisions of clause 4. In the case of a dispute, it will be resolved in accordance with the dispute resolution provisions of clause 22.

40. TRANSPARENCY REQUIREMENTS

The Supplier confirms that it understands that the Council routinely publishes spending data of transactions over £500 in accordance with the Local Government Transparency Code 2015.

41. SERVICE CONTINUITY

The Supplier will 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.

The Supplier will 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 Goods and/or Services in the event of a major incident affecting its ability to provide the Goods and/or Services, including an insolvency event affecting the Supplier or any key-subcontractor, such plans to be appropriate to the scale of the Supplier's commitments under the Contract.

The Council reserves the right to request detailed evidence of contingency plans such as sight of the Supplier'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 Supplier will review the plans as a minimum every six months.

42. WHISTLEBLOWING

The Supplier will adhere to the principles set out in the Council's whistleblowing policy in reporting concerns which arise during the Contract and will ensure that its agents, contractors and sub-contractors do the same. The Council's whistleblowing policy can be accessed at www.dorsetcouncil.gov.uk

43. ENTIRE AGREEMENT

This Contract is the exclusive statement of the agreement between the Parties in relation to the supply of the Goods and/or Services and it supersedes all previous communications, representations, arrangements and agreements between the Parties.

Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.

44. GOVERNING LAW AND JURISDICTION

The Contract is governed by and will be interpreted in accordance with the law of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1 – Data Protection

Definitions

For the purposes of this Schedule, the following terms shall have the following meanings:

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer have the meaning given in the Data Protection Legislation;

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

Data Subject Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

DPA 2018: Data Protection Act 2018;

EU GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679);

Permitted Recipients: the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement;

Processor Personnel means all directors, officers, employees, agents, consultants and contractors of the Processors and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it;

Sub-processor: any third party appointed to process Personal Data on behalf of that Processor related to this Contract.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

1. Data Protection

- 1.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. Clauses 1.1 to 1.14 inclusive apply to the Processing of Personal Data and are in addition to, and do not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 1.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor unless otherwise specified in Schedule A. The only processing that the Processor is authorised to do is listed in Schedule A by the Controller and may not be determined by the Processor.
- 1.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Schedule A, unless the Processor is required to do otherwise by law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule A);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (in accordance with Part 3 of the DPA 2018 and UK GDPR) as determined by the Controller;

- (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by law to retain the Personal Data.
- 1.6 Subject to Clause 1.7, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
 - (f) becomes aware of a Data Loss Event.
- 1.7 The Processor's obligation to notify under Clause 1.7 shall include the provision of further information to the Controller in phases, as details become available.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause in accordance with the requirements of the Data Protection Legislation and allow for audits by the Controller or the Controller's designated auditor.

- 1.9 The Processor shall designate its own data protection officer if required by the Data Protection Legislation.
- 1.10 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
 - (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.11 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 1.12 The Controller may, at any time on not less than 30 Working Days' notice, revise this Clause 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 incorporated by attachment to this Contract).
- 1.13 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice instruct the Processor to amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Schedule A

Data Processing Schedule

NOTE: THIS TABLE RELATES ONLY TO DATA FOR WHICH THE COUNCIL IS CONTROLLER AND PROVIDER IS PROCESSOR.

| Description | Guidance | Supplier Response |
|---------------------------------------|---|--------------------------|
| Subject matter of the processing | <i>This should be a high level, short description of what the processing is about e.g. employees, service users</i> | |
| Duration of the processing | <i>For example, for the duration of the contract including any extension or in accordance with instructions from the Council</i> | |
| Nature and purposes of the processing | <p><i>Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc</i></p> | |
| Type of Personal Data | <i>For example, name, address, date of birth, NI number, contact details,</i> | |

| | | |
|---|---|--|
| | <i>pay, images, job status biometric data etc</i> | |
| Categories of Data Subject | <i>For example, Service Users, Staff (including volunteers), students / pupils, members of the public, users of a particular website etc.</i> | |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | <i>Describe how long the data will be retained for, how it will be returned or destroyed</i> | |