



DATED [INSERT DATE] 2022

GOODS AND SERVICES AGREEMENT

Between

THE ROYAL BOROUGH OF KINGSTON UPON THAMES

And

[INSERT NAME OF SUPPLIER]

Relating To The Provision of Market Research Services to
Measure Resident Perception of Environmental Services

© The Royal Borough of Kingston Upon Thames
Guildhall
High Street,
Kingston Upon Thames
KT1 1EU

Ref: DN612362

CONTENTS

CLAUSE

1.	Definitions And Interpretation	1
2.	Commencement And Duration	5
3.	Health And Safety	6
4.	Supplier's Obligations	6
5.	Council's Obligations	8
6.	Council Remedies	8
7.	Change Control	9
8.	Charges, Payment And London Living Wage	9
9.	Intellectual Property Rights	11
10.	Confidentiality, Freedom Of Information And Transparency	12
11.	Data Protection	13
12.	Indemnity	16
13.	Insurance	16
14.	Limitation Of Liability	17
15.	Termination	18
16.	Consequences Of Termination	19
17.	Force Majeure	19
18.	Variation	20
19.	Waiver	20
20.	Rights And Remedies	21
21.	Severance	21
22.	Entire Agreement	21
23.	Prevention Of Bribery	21
24.	Assignment And Other Dealings	23
25.	No Partnership Or Agency	23
26.	Third Party Rights	24
27.	Notices	24
28.	Dispute Resolution Procedure	25
29.	Governing Law	26
30.	Jurisdiction	26

SCHEDULE

SCHEDULE 1	SPECIFICATION	28
SCHEDULE 2	PRICING	29
Part 1.	Price	29
Part 2.	Payment	29
SCHEDULE 3	CONTRACT MANAGEMENT	30
1.	Authorised Representatives	30
2.	Key Personnel	30
3.	Meetings	30
4.	Reports	30
SCHEDULE 4	DATA PROCESSING INSTRUCTIONS	31
SCHEDULE 5	SUPPLIER'S PROPOSAL	33

THIS AGREEMENT is dated **[INSERT DATE]** 2022

PARTIES

- (1) **THE ROYAL BOROUGH OF KINGSTON UPON THAMES** whose principal office is at Guildhall, High Street, Kingston Upon Thames, KT1 1EU (**Council**).
- (2) **[INSERT FULL COMPANY NAME]** incorporated and registered in England and Wales with company number *[insert company number.]*

BACKGROUND

- (A) The Supplier submitted a tender on 3 June 2022 in response to the Council's request for tenders issued on 16 May 2022.
- (B) The Council has (based on the Supplier's tender referred to above), appointed the Supplier to supply the Services and the Supplier has agreed to do so on the terms and conditions of this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this Agreement:

Agreement: the terms and conditions of contract and the Schedules.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

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

Commencement Date: 13 June 2022.

Council Data: all Documents, information and materials provided by the Council relating to the Services.

Council's Manager: the Council's manager appointed in accordance with clause 5.1.

- 1 **Data Controller:** shall have the same meaning as set out in the Data Protection Legislation.

- 2 **Data Processor:** shall have the same meaning as set out in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy.

Data Subject: shall have the same meaning as set out in the Data Protection Legislation.

Deliverables: all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form.

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

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Expiry Date: 13 October 2022.

Force Majeure Event: any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier's personnel or any other failure in the Supplier's supply chain.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

3 **GDPR:** the General Data Protection Regulation ((EU) 2016/679).

Government Prevent Strategy: a policy forming part of HM Government's counter-terrorism strategy, available at:

<http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy/prevent-strategy-review?view=Binary>

as may be amended from time to time.

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

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

4 **London Living Wage:** the rate which is set as the London Living Wage by the Mayor of London and/or the Greater London Authority and/or another relevant person, body or agency (before tax, other deductions and any increase for overtime), as may be revised from time to time by the Mayor of London, the Greater London Authority and/or another relevant person, body or agency.

5 **Personal Data:** shall have the same meaning as set out in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) to commit any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) relating to defrauding, attempting to defraud or conspiring to defraud the Council.
- (d) any activity, practice or conduct which would constitute one of the offences listed under clause (c) above, if such activity, practice or conduct had been carried out in the UK.

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

Services: the services including without limitation any Deliverables, to be provided by the Supplier under this Agreement as set out in Schedule 1 together with any other services which the Supplier provides or agrees to provide to the Council.

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

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

Supplier's Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any sub-contractors who are engaged in the provision of the Services from time to time.

Supplier's Proposal: the Supplier's document submitted in response to the Council's invitation to tender and which is attached as Schedule 5 to this Agreement.

VAT: value added tax chargeable under English Law for the time being and any similar additional tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** includes fax and e-mail.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail. Where there is any conflict between any of the other schedules and the Supplier's Proposal the provisions of the relevant schedule(s) will prevail over the Supplier's Proposal.

2. COMMENCEMENT AND DURATION

- 2.1 The Supplier shall provide the Services to the Council from the 13 June 2022 until the Expiry Date and this Agreement shall terminate automatically on the Expiry Date unless extended in accordance with clause 2.2 below.
- 2.2 The Council may extend this Agreement beyond the Expiry Date by a further period or periods of up to six months. If the Council wishes to extend this Agreement, it shall give the Supplier at least one months' written notice of such intention before the Expiry Date. If the Council gives such notice, then the term shall be extended by the period set out in the notice.

3. HEALTH AND SAFETY

- 3.1 The Supplier shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of this Agreement.

- 3.2 The Council shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Location that may affect the Supplier in the performance of this Agreement.
- 3.3 While on any of the Council's premises (including the Location), the Supplier shall comply with any health and safety measures implemented by the Council in respect of staff and other persons working on the Council's premises or at the Location as notified to the Supplier from time to time.
- 3.4 While on any of the Council's premises (including the Location), the Supplier shall notify the Council immediately in the event of any incident occurring in the delivery of the Goods at the Location or performance of the Services at the Council's premises (as the case may be), where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 3.5 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Council's premises or at the Location in the performance of the Contract.
- 3.6 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Council on request.

4. SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier shall use reasonable endeavours to provide the Services to the Council, in accordance with the Specification (Schedule 1) and the Supplier's Proposal (Schedule 5) in all material respects.
- 4.2 The Supplier shall meet any performance dates or milestones specified in the Specification (Schedule 1) and the Supplier's Proposal (Schedule 5). Unless otherwise agreed by the parties, time shall be of the essence in delivering the Services.
- 4.3 The Supplier shall appoint the Supplier's Manager who shall have authority contractually to bind the Supplier on all matters relating to the Services. The Supplier shall ensure that the same person acts as the Supplier's Manager throughout the term of this Agreement but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.
- 4.4 In performing its obligations under this agreement, the Supplier shall:
 - (a) co-operate with the Council in all matters relating to the Services, and comply with all instructions of the Council;
 - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;

- (d) ensure that the Services will conform with all descriptions and specifications set out in Schedule 1;
- (e) provide all equipment, tools and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables and all goods and materials supplied and used in the Services or transferred to the Council, will be free from defects in workmanship and design;
- (g) obtain and at all times maintain all necessary licences and consents and comply with all applicable Laws and regulations;
- (h) hold all Council Data in safe custody at its own risk, maintain the Council Data in good condition until returned to the Council, and not dispose of or use the Council Data other than in accordance with the Council's written instructions or authorisation;
- (i) not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business and the Supplier acknowledges that the Council may rely or act on the Services;
- (j) if delivering Services at the Council's premises, observe all of the Council's policies and procedures in force at such premises as notified to the Supplier from time to time;
 - at all times comply with the provisions of the Modern Slavery Act 2015, the Human Rights Act 1998, the Government Prevent Strategy and all equality Laws in force from time to time. The Supplier shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998 and all equality Laws in force from time to time;
- (k) comply with all environmental and other Laws applicable to the performance of its obligations under this Agreement; and

5. COUNCIL'S OBLIGATIONS

5.1 The Council shall:

- (a) co-operate with the Supplier in all matters relating to the Services and shall appoint the Council's Manager in relation to the Services who shall have the authority contractually to bind the Council on matters relating to the Services;
- (b) provide, in a timely manner, such Council Data and other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects;

6. COUNCIL REMEDIES

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

- (a) to terminate this Agreement with immediate effect by giving written notice to the Supplier;

- (b) to recover from the Supplier any costs incurred by the Council in obtaining substitute Services from a third party;
 - (c) where the Council has paid in advance for Services that have not been provided by the Supplier by the Supplier, to have such sums refunded by the Supplier; and
 - (d) to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 The provisions of this clause 9 shall extend to any substituted or remedial Services supplied by the Supplier.
- 6.3 The Council's rights under this Agreement are in addition to its rights and remedies implied by statute and common law.

7. CHANGE CONTROL

- 7.1 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 7.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Council of:
 - (a) the likely time required to implement the change;
 - (b) any necessary variations to the Supplier's charges arising from the change;
 - (c) the likely effect of the change on the Services; and
 - (d) any other impact of the change on this Agreement.
- 7.3 If the Council wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services and any other relevant terms of this Agreement to take account of the change and this Agreement has been varied in accordance with clause 18 (Variation).
- 7.4 Notwithstanding clause 7.3 the Supplier may, from time to time and without notice, change the way in which the Services are performed in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Council shall not unreasonably withhold or delay consent to it.

8. CHARGES, PAYMENT AND LONDON LIVING WAGE

- 8.1 The charges for the Services shall be as set out in Schedule 2 (Pricing), and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Council, the charges shall include every cost and expense of the Supplier

directly or indirectly incurred in connection with the performance of the Services.

- 8.2 The Council shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within thirty (30) days of receipt to a bank account nominated in writing by the Supplier.
- 8.3 All amounts payable by the Council under this Agreement are exclusive of amounts in respect of VAT chargeable from time to time. Where any taxable supply for VAT purposes is made under this Agreement by the Supplier to the Council, the Council shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 8.4 If a party fails to make any payment due to the other party under this Agreement by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above The Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 8.5 The Supplier shall maintain complete and accurate records of the resources applied to and cost of providing the Services and the Supplier shall allow the Council to inspect such records at all reasonable times on request.
- 8.6 The Council may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Council against any liability of the Council to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement.
- 8.7 Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing this Agreement or any part of it, it shall cause a term to be included in such a sub-contract that requires payment to be made of undisputed sums by the Supplier to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.
- 8.8 The Supplier shall:
- (a) pay all the Supplier's Personnel, a wage which is equal to or exceeds the London Living Wage;
 - (b) ensure that all staff employed or engaged by its subcontractors (if any) pay an equivalent wage which is equal to or exceeds the London Living Wage;
 - (c) Where the Supplier's Personnel are paid the London Living Wage and not a salary higher than the London Living Wage, the Supplier agrees to increase the amount which it pays the Supplier's Personnel by the same amount as any increase to the London Living Wage within twelve (12)

months of the date on which any increase in the London Living Wage is announced by the Greater London Authority.

(d) Provide the Council such information concerning the London Living Wage Rate as the Council or its nominees may reasonably require from time to time, such information to be provided as part of the contract management requirements to include evidence that the Supplier is complying with the provisions of this agreement.

(e) Co-operate with the Council and provide all reasonable assistance to the Council in monitoring the effect of the London Living Wage Rate.

8.9 Unless stated otherwise in this agreement, if the London Living Wage increases during the term of this agreement, the Supplier shall not be entitled to adjust the charges and the parties agree and acknowledge that any increases in the London Living Wage anticipated during the term of this agreement have been factored into the charges.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Supplier assigns to the Council, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services.

9.2 At its own expense, the Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement, including securing for the Council all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Council in accordance with clause 12.1.

9.3 The Supplier shall obtain waivers of any moral rights in the products of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of Law in any jurisdiction.

10. CONFIDENTIALITY, FREEDOM OF INFORMATION AND TRANSPARENCY

10.1 A party (**'Receiving Party'**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**'Disclosing Party'**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement, and shall ensure that such employees, agents and subcontractors comply with the confidentiality obligations set out in this clause 13.1 as though they were a party to this Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by Law, any governmental or regulatory authority or by a court of competent jurisdiction.

- 10.2 The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the EIRs and the Supplier shall assist and co-operate with the Council (at the Supplier's expense) to enable the Council to comply with these information disclosure requirements.
- 10.3 The Supplier shall and shall procure that its staff including its subcontractors:
- (a) transfer any Request For Information received by the Supplier and/or any Supplier personnel to the Council as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request For Information;
 - (b) provide the Council with a copy of all information in the Supplier's possession or power in the form that the Council requires within five (5) Business Days (or such other period as the Council may specify) of the Council requesting that information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request For Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
- 10.4 The Council shall be responsible for determining at its absolute discretion whether the information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs;
 - (b) is to be disclosed in response to a Request For Information, and in no event shall the Supplier respond directly to a Request For Information unless expressly authorised to do so by the Council.
- 10.5 In no event shall the Supplier respond directly to a Request For Information unless expressly authorised to do so by the Council.
- 10.6 The Supplier acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRs to disclose information:
- (a) without consulting with the Supplier; or
 - (b) following consultation with the Supplier and having taken its views into account,
- provided always that where clause 10.6 (b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention as soon as practicable after any such disclosure.
- 10.7 The Supplier shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure for six (6) years after expiry or earlier termination and shall permit the Council to inspect such records as requested from time to time.

- 10.8 The Council, in line with the Government's ongoing drive to open up the activities of the Public Sector to greater scrutiny, has prepared its transparency agenda and the Supplier hereby agrees that, notwithstanding anything set out in this clause 10 or elsewhere in this Agreement, the Council shall be entitled to publish this Agreement in whole or in part (including from time to time any agreed changes to the Agreement), in whatever form the Council may decide. The Supplier further agrees that the Council may publish any payments made by the Council to the Supplier under this Agreement.
- 10.9 This clause 10 shall survive termination of this Agreement.

11. DATA PROTECTION

- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.2 Notwithstanding the general obligation in clause 11.1, where the Supplier is processing Personal Data as a Data Processor for the Council as Data Controller, the Supplier shall ensure that it has in place appropriate technical, organisational and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Data Protection Legislation and the Supplier shall:
- (a) process the Personal Data only in accordance with the documented instructions from the Council which may be specific instructions or instructions of a general nature as set out in Schedule 4 to this Agreement or as otherwise notified by the Council to the Supplier (in writing) from time to time and for no other purpose;
 - (b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by the Data Protection Legislation;
 - (c) obtain prior written consent from the Council in order to transfer the Personal Data to any subcontractors, agents or other third parties for the provision of the Services and oblige by way of contract or other binding legal arrangement any such parties to comply with the same data protection obligations as those set out in this clause 14;
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
 - (i) the Council or the Supplier has provided appropriate safeguards in relation to the transfer in accordance with Data Protection Legislation as determined by the Council;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier 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 Council in meeting its obligations); and

- (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
 - (e) take reasonable steps to ensure the reliability of any of the Supplier's Personnel who have access to the Personal Data;
 - (f) ensure that the Supplier's Personnel without appropriate authority do not have access to the Personal Data;
 - (g) ensure that all the Supplier's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 11;
 - (h) ensure that all the Supplier's Personnel receive an adequate level of training in data protection;
 - (i) ensure that the Supplier's Personnel do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
 - (j) notify the Council within twenty-four hours if it becomes aware of a breach or alleged breach of the Data Protection Legislation;
 - (k) provide the Council with full co-operation and assistance in relation to investigating breaches to include inspection of premises and security arrangements if requested.
 - (l) notify the Council (within two (2) Business Days), if it receives a Data Subject Access Request under the Data Protection Legislation or a complaint relating to the Council's obligations and promptly notify the Council of any breach of the security measures required to be put in place pursuant to this clause 11;
 - (m) provide the Council with full co-operation and assistance in relation to any complaint or request made under the Data Protection Legislation including by:
 - (i) providing the Council with full details of the complaint or request;
 - (ii) providing the Council with any information requested by the Council within the timescales required by the Council.
- 11.3 The Supplier shall, upon reasonable notice, allow officers of the Council to have reasonable rights of access at all times to the Supplier's premises, Supplier's Personnel and records for the purposes of monitoring the Supplier's compliance with the Data Protection Legislation including its security requirements.
- 11.4 The Supplier shall at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of this Agreement unless the Supplier is required by Law to retain the Personal Data.
- 11.5 The provisions of this clause 14 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

12. INDEMNITY

12.1 The Supplier shall keep the Council indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered/ incurred by the Council as a result of or in connection with:

- (a) any claim made against the Council for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against the Council by a third party for death, personal injury or damage to property arising out of, or in connection with, the Services are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against the Council by a third party arising out of or in connection with the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier, its employees, agents or subcontractors.

12.2 This clause 12 shall survive termination of this Agreement.

13. INSURANCE

16.1 The Supplier shall be liable for any and all losses, liabilities or costs (including reasonable legal costs) incurred by the Council in connection with the Supplier's performance of the Services and shall maintain in force during the period of this Agreement and for six (6) years thereafter as a minimum the following insurance cover with reputable insurers acceptable to the Council:

- 16.1.1 Employer's Liability Insurance of not less than £5 million for each and every claim, act or occurrence or series of claims, acts or occurrences; and
- 16.1.2 Public Liability Insurance of not less than £5 million for each and every claim, act or occurrence or series of claims, acts or occurrences.
- 16.1.3 Professional Indemnity Insurance of not less than £1 million for each and every claim, act or occurrence or series of claims, acts or occurrences.

16.2 The Supplier shall give the Council, on request, copies of all insurance policies referred to in this clause 16 or a broker's verification of insurance to demonstrate that the appropriate cover as required by this clause 16 is in place, together with receipts or other evidence of payment of the latest premiums due in respect of such insurances.

14. LIMITATION OF LIABILITY

- 14.1 Nothing in this Agreement limits or excludes either party's liability for:
- (a) death or personal injury caused by its negligence; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) destruction of the Council's property; or
 - (d) breach of clause 12 (Intellectual Property Rights), clause 13 (Confidentiality, Freedom of Information and Transparency), clause 14 (Data Protection) and clause 26 (Prevention of Bribery); or
 - (e) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable Law.
- 14.2 Subject to clause 14.1, neither party shall be liable to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) any indirect or consequential loss.
- 14.3 Subject to clause 14.1 and clause 14.2, each party's total liability to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to £60,000 per claim

15. TERMINATION

- 15.1 Without affecting any other right or remedy available to it, the Council may terminate this Agreement with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of five days after being notified in writing to do so;
 - (b) the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
 - (c) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (d) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a

proposal for or enters into any compromise or arrangement with its creditors;

- (e) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) days;
- (g) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1(c) to clause 15.1(f) (inclusive);
- (h) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

15.2 Without affecting any other right or remedy available to it, the Council may terminate this Agreement in whole or in part at any time by giving four weeks' written notice to the Supplier.

15.3 For the purposes of clause 15.1(a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (a) a substantial portion of this Agreement; or
- (b) any of the obligations set out in clauses 12 (Intellectual Property Rights), clause 13 (Confidentiality, Freedom of Information and Transparency), clause 14 (Data Protection) and clause 26 (Prevention of Bribery).

16. CONSEQUENCES OF TERMINATION

16.1 On termination or expiry of this Agreement:

- (a) the Council shall pay to the Supplier all of the Supplier's outstanding undisputed invoices and interest (if applicable under clause 11.4) and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be paid in accordance with clause 11;
- (b) each party shall, within a reasonable time, return all of the other party's property in its possession or under its control. Until they have been returned, the party with custody or control of such property shall be solely responsible for their safe keeping;
- (c) the following clauses shall continue in force: clause 12 (Intellectual Property Rights), clause 13 (Confidentiality, Freedom of Information and Transparency), clause 14 (Data Protection), clause 20 (Limitation of Liability), clause 27 (Notices), clause 28 (Dispute Resolution), clause 29 (Governing Law) and clause 33 (Jurisdiction).

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

17. FORCE MAJEURE

- 17.1 Provided it has complied with clause 17.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 17.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 17.3 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than two days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 17.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving five days written notice to the Affected Party.
- 17.5 If the Force Majeure Event prevails for a continuous period of more than 1 month, either party may terminate this Agreement by giving five days' written notice to the other party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

18. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other

right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20. RIGHTS AND REMEDIES

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

21. SEVERANCE

- 21.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, subject to clause 24.2, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 21.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. ENTIRE AGREEMENT

- 22.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 22.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 22.3 Nothing in this clause shall limit or exclude any liability for fraud.

23. PREVENTION OF BRIBERY

- 23.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any of its employees, agents or sub-contractors, have at any time prior to the Commencement Date:
 - (a) committed a Prohibited Act or been formally notified that they are subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

- 23.2 The Supplier shall not during the term of this Agreement:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the provisions of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 23.3 The Supplier shall during the term of this Agreement:
- (a) establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under clause 26.3(a) and make such records available to the Council on request.
- 23.4 The Supplier shall immediately notify the Council in writing if it becomes aware of any breach of clause 23.1 and/or clause 23.2, or has reason to believe that it has or any of the Supplier's personnel (including its advisors, agents and sub-contractors) have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 23.5 If the Supplier makes a notification to the Council pursuant to clause 23.4, the Supplier shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with this Agreement.
- 23.6 If the Supplier is in default under clause 23.1 and/or clause 23.2, the Council may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier's personnel whose acts or omissions have caused the default; or
 - (b) immediately terminate this Agreement.
- 23.7 Any notice served by the Council under clause 23.6 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Agreement shall terminate).

24. ASSIGNMENT AND OTHER DEALINGS

- 24.1 This Agreement is personal to the Supplier and the Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Council.
- 24.2 The Council may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.

25. NO PARTNERSHIP OR AGENCY

- 25.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute one party the agent of the other party, or authorise one party to make or enter into any commitments for or on behalf of the other party.
- 25.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

26. THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no one other than a party to this Agreement shall have any right to enforce any of its terms.

27. NOTICES

- 27.1 Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to the party required to receive the notice or communication at its address and to the addressee as set out herein or as otherwise specified by the relevant party by notice in writing to the other party:

For the Council

Name: John Haynes,

Address: Brand Narrative Limited, 13 Kingsdowne Road, Surbiton, KT6 6JZ / john@brand-narrative.com

For the Supplier

Name: *****

Address: *****

- 27.2 Any notice or other communication provided that it is clearly marked for the attention of the Council's contact person or the Supplier's contact person referred to in clause 27.1 (as the case may be) shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address referred to in clause 27.1; or
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed or;
- (d) if sent by email upon receipt of a letter sent by first class or recorded delivery post or other next Business Day delivery service confirming the content of the email.

27.3 The provisions of this clause 27 shall not apply to the service of any proceedings or other documents in any legal action.

28. DISPUTE RESOLUTION PROCEDURE

28.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the South London Waste Partnership Director of the Council and [*insert employee title*] of the Supplier shall attempt in good faith to resolve the Dispute;
- (b) if the South London Waste Partnership Director of the Council and [*insert employee title*] of the Supplier are for any reason unable to resolve the Dispute within 10 days of service of the Dispute Notice, the Dispute shall be referred to the Assistant Director Contracts and Commercial of the Council and [*insert senior officer title*] of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the Assistant Director Contracts and Commercial of the Council and [*insert senior officer title*] of the Supplier are for any reason unable to resolve the Dispute within 10 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 14 days after the date of the ADR notice.

28.2 If the Dispute is not resolved within 28 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 28 days, or the mediation terminates before the expiration of the said period of 28 days, the Dispute shall be finally resolved by [the courts of England and Wales in accordance with clause 32 (Governing Law) and clause 33 (Jurisdiction)].

29. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Law of England and Wales.

30. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed by the parties and takes effect on the date stated at the beginning of it.

EXECUTED
by **THE ROYAL BOROUGH OF
KINGSTON UPON THAMES** acting by
and under the signature of

.....
Authorised Signatory

Name:

Position:

EXECUTED
by **[INSERT NAME OF SUPPLIER]**
acting by and under the signature of:

Name:

Position:

.....

Signature

Schedule 1 Specification¹

¹ To be inserted after award of contract. This will be the Specification included in the RFQ or Invitation to Tender. If the contract is made by direct award, you will need to set out clearly in this schedule what the Council requires.

Schedule 2 Pricing²

Part 1. Price

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

Part 2. Payment

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

² To be completed after award to include information supplied by the successful bidder OR the pricing that the Council proposes where the contract is a direct award.

Schedule 3 Contract Management

1. AUTHORISED REPRESENTATIVES

- 1.1 The Council's Manager: John Haynes, Brand Narrative Limited (SLWP Communications Advisor), 07932 690 947 / 13 Kingsdowne Road, Surbiton, KT6 6JZ.
- 1.2 The Supplier's Manager: [*Insert name, address, telephone number and email address*].

2. KEY PERSONNEL

[INSERT DETAILS]

3. MEETINGS

- 3.1 Type
- 3.2 Quorum
- 3.3 Frequency
- 3.4 Agenda

4. REPORTS

- 4.1 Type
- 4.2 Contents
- 4.3 Frequency
- 4.4 Circulation list

Schedule 4 Data Processing Instructions

1. The Supplier shall comply with any further written instructions with respect of processing received from the Council. Any such further instructions shall be incorporated into this Schedule.

2. Processing by the Supplier

2.1 Scope

As part of this contract it will be necessary for the Supplier to collect and store demographic data from participants in the survey.

2.2 Nature

The Supplier shall ask these questions as part of the Computer-Aided Telephone Interview (CATI) survey. Residents contacted will have the option not to take part in the survey, or to take part in the survey but not answer all (or some) of the demographic sampling questions.

2.3 Purpose of processing

The demographic data collected will only be used by the Supplier to ensure as representative a sample of residents as possible has been contacted and to weight the findings data accordingly. All of the data and individual survey responses are to remain confidential, and will not be passed on to any other organisation, including the SLWP.

2.4 Duration of processing

Personal data will be collected by the Supplier during the Fieldwork stage of this contract (4 July – 12 August 2022) and will be referred to during the preparation of the Findings Report. All data must be stored in accordance with the Data Protection Act 2018 and in line with good industry practice (i.e. the Market Research Code of Conduct 2019).

2.5 Types of Personal Data

It will be necessary for the Supplier to collect and store the following personal information from respondents: Gender, Age, Disability/Chronic illness, Working Status, Ethnicity, Ward, Property type.

2.6 Categories of Data Subject

Members of the public / residents of the four London Boroughs of Croydon, Kingston, Merton and Sutton.

2.7 Data Retention

The personal data collected by the Supplier will be held (in accordance with the Data Protection Act 2018) until the end of the Contract (13 October 2022). At that point it will be destroyed securely and in line with The Data Protection Act 2018 and Market Research Code of Conduct 2019.

Schedule 5 Supplier's Proposal³

³ Successful bidder's proposal to be included after award of contract