Dated

------------2019

Supply of services agreement

between

[ ]

and

North Somerset Council

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**THIS AGREEMENT** is dated 2019

Parties

1. [**FULL COMPANY NAME**] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Supplier).
2. **NORTH SOMERSET COUNCIL** of Town Hall Walliscote Grove Road Weston-super-Mare BS23 1UJ (Council).

Background

A. The Council uses a public space surveillance system for the protection of public safety.

B. The Council’s current system is in need of upgrading to include advantages of new technology.

C. By a [competitive tender following advertisements in the OJEU dated [ ]] the Council has selected the Supplier to provide the Equipment and Services as defined below.

Agreed terms

# Interpretation

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

## Definitions.

Authorised Service Recipients**:** any third party to whom the parties agree (in accordance with **Clause** 5) the Services should be supplied.

Business Day: means any day when the Council’s office at the Town Hall Weston-super-Mare is open for business.

Completion Test: a test of all Goods to confirm full satisfaction of the requirements of the Specification and Works Programme in accordance with the terms of this Contract.

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

Council's Manager**:** the Council's manager for the Services, appointed in accordance with **Clause** 4.

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

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

Goods**:** the goods (or any part of them) set out in the Specification*.*

Goods Specification**:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

holding company**:** has the meaning given in **Clause** 1.6.

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

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

Maintenance Service Period: means a period of three (3) years from the and including the date when the Council confirms of satisfactory completion of the Completion Test unless earlier terminated in accordance with **Clause 16**..

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

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

Programme Milestones: any specific deadlines for the Project agreed in the Work Programme.

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

Services**:** the services and Deliverables to be provided by the Supplier under this agreement, as set out in the Work Programme and in accordance with Schedule 1 (**the Specification**) and the Supplier's obligations under this agreement, together with any other Deliverables and/or services which the Council agrees to take from the Supplier.

Specification: means the Council’s specification for the Services as set out in Schedule 1

subsidiary**:** has the meaning given in **Clause** 1.6.

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 Project appointed under **Clause** 3.3.

Supplier's Team**:** the Supplier's Manager and all employees, consultants, agents and subcontractors which it engages in relation to the Project and who are appointed under **Clause** 3.3.

Term: means a period of years commencing on and including the Term Commencement Date and expiring on the last day of the Maintenance Service Period unless earlier terminated in accordance with **Clause 16**.

Term Commencement Date*: [the* *date of this agreement]*

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

Works Programme**:** the specification for the Project agreed in accordance with **Clause** 3 and, on such agreement, to be attached to this agreement and to form **Schedule** 2.

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

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

## The **Schedule**s 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 **Schedule**s.

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

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

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

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

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

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

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

## A reference to **writing** or **written** excludes fax and e-mail.

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

## References to **Clause**s and **Schedule**s are to the **Clause**s and **Schedule**s of this agreement and references to paragraphs are to paragraphs of the relevant **Schedule**.

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

# Commencement and duration

## The Supplier shall provide the Services to the Council and the Authorised Service Recipients on the terms and conditions of this agreement.

## The Supplier shall:

### Complete the Work Programme within 8 weeks of approval of the Work Programme in accordance with **clause** **3** including satisfactory Site Acceptance Test(s) and Completion Test in accordance with **paragraphs [13.4 and 13.7] of the Specification**; and

### thereafter provide the staff training and the Maintenance Services throughout the Maintenance Services Period.

# Supplier's responsibilities

## Before the expiration of 6 weeks from and including the Term Commencement Date the Supplier shall prepare and submit to the Council a proposed Work Programme incorporating Programme milestones for completion or the stages of the Project, in accordance with the Specification and the Proposal.

## The Council shall at its absolute discretion approve the proposed Work Programme or acting reasonably may allow the Supplier a further specified length of time to prepare an alternative proposed Work Programme. If the Council does not approve either proposed Work Programme then the provisions of **Clause 16.2(o)** shall apply**.**

## If the Council approves the proposed Work Programme in accordance with **Clause 3.2** this shall become the Work Programme and the milestones specified within it the Programme Milestones.

## The Supplier shall manage and complete the Services and deliver the Deliverables to the Council or to any Authorised Service Recipients**,** in accordance with the Work Programme, and shall allocate sufficient resources to the Project to enable it to comply with this obligation.

## The Supplier shall meet, and time is of the essence as to, any Programme Milestones specified in the Work Programme and, the time stipulated for the delivery of a draft Work Programme. If the Supplier fails to do so, the Council may (without prejudice to any other rights it may have):

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

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

### purchase substitute services from elsewhere;

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

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

## The Supplier shall:

### co-operate with the Council in all matters relating to the Project;

### subject to the prior written approval of the Council, appoint or, at the request of the Council, replace without delay the Supplier's Manager, who shall have authority under this agreement contractually to bind the Supplier on all matters relating to the Services who shall be suitably skilled, experienced and qualified to carry out the Services.

### subject to **Clause** 3.6(b), ensure that the same person acts as the Supplier's Manager throughout the term of this agreement;

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

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

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

### ensure that the Supplier's Team use reasonable skill and care in the performance of the Services.

## The Supplier shall:

### observe, and ensure that the Supplier's Team observe, all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Council's premises and that have been communicated to it under **Clause** 4(d). The Council reserves the right to refuse the Supplier's Team access to the Council's premises, which shall only be given to the extent necessary for the performance of the Services;

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

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

#### the Services;

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

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

#### the use of all Documents, information and materials provided by the Supplier or its agents, subcontractors, consultants or employees relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications; and

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

## The Supplier acknowledges and agrees that:

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

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

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

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

# Council's obligations

The Council shall:

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

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

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

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

# Change control

## The Council's Manager and the Supplier's Manager shall meet at least once every 2 weeks to discuss matters relating to the Project. If either party wishes to change the scope or execution of the Project, it shall submit details of the requested change to the other in writing.

## If either party requests a change to the scope or execution of the Project, the Supplier shall, within a reasonable time (and in any event not more than 4 working days after receipt of the Council's request), provide a written estimate to the Council of:

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

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

### the likely effect of the change on the Work Programme; and

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

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

## If both parties consent to a proposed change, the change shall be made, only after agreement of the necessary variations to the Supplier's charges, the Project, the Services and any other relevant terms of this agreement to take account of the change that has been reached and this agreement has been varied in accordance with **Clause** 22.

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

# Charges and payment

## In consideration of the provision of the Services by the Supplier, the Council shall pay the charges as set out in **Schedule** 3.

## Where Services are provided on a time and materials basis:

### The charges for the relevant materials in accordance with the rates set out in **Part 1 of Schedule 3** and in relation to planned Maintenance Services in accordance with **Part 2 of Schedule 3**:

### the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates for the Supplier's Team, details of which are set out in the Proposal;

### the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between [8.00 am] and [5.00 pm] on weekdays (excluding public holidays);

### the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's Team unless it has the Council's prior written consent to do so;

### all charges quoted to the Council shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;

### the Supplier shall ensure that the members of the Supplier's Team complete time sheets recording time spent on the Project, and, subject to the written approval of them by the Council's Manager, the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in **Clause** 6.2(f); and

### the Supplier shall invoice the Council monthly in arrears for its charges for monthly pre-planned Maintenance Services charges, as well as time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this **Clause** 6.2 and **Clause** 6.4. Each invoice shall set out the time spent by each member of the Supplier's Team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

## Any daily rate contained in **Schedule** 3 or the Work Programme excludes VAT, which the Supplier shall add to its invoices at the appropriate rate.

## The Council shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.

## If a party fails to make any payment due to the other party under this agreement by the due date for payment, then, without limiting the other party's remedies under **Clause** 13, the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above Barclays Bank PLC’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.

## In relation to payments disputed in good faith, interest under **Clause** 6.5 is payable only after the dispute is resolved, on sums found or agreed to be due, from 7 days after the dispute is resolved until payment.]

## Invoices covering payment in respect of materials purchased by, or services provided to, the Supplier, or for reimbursement of expenses, shall be payable by the Council only if accompanied by relevant receipts.

## The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services in such form as the Council shall approve. The Supplier shall allow the Council to inspect such records at all reasonable times on request.

## The Council may at any time, without notice to the Supplier, 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. If the liabilities to be set off are expressed in different currencies, the Council may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Council of its rights under this **Clause** shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

# Quality of Services

## The Supplier warrants to the Council that:

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

### the Services will conform with all descriptions and specifications provided to the Council by the Supplier, including the Proposal, Specification and Work Programme; and

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

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

## The provisions of this **Clause** 7 shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Supplier.

# Goods

## The Goods are described in the Proposal.

# Quality of Goods

## The Supplier warrants that on completion of installation, and for a period of 3 from the date of completion of satisfactory Completion Test installation (warranty period), the Goods shall:

### conform in all material respects with their description and any applicable Goods Specification;

### be free from material defects in design, material and workmanship;

### be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

### be fit for any purpose held out by the Supplier.

## Subject to clause 9.3, if:

### the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 9.1;

### the Supplier is given a reasonable opportunity of examining such Goods; and

### the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

## The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 9.1 if:

### the Customer makes any further use of such Goods after giving a notice in accordance with clause 9.2;

### the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

### the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

### the Customer alters or repairs such Goods without the written consent of the Supplier;

### the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

### the Goods differ from their description **or** the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

## Except as provided in this clause 9, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 9.1.

## The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 9.2.

# Intellectual property rights

## 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 (including the Deliverables).

## At its own expense, the Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this agreement, including securing for the 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** 10.1.

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

# Indemnity

## The Supplier shall indemnify and hold the Council harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Council as a result of or in connection with:

### any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables); or

### any claim made against the Council in respect of any liability, loss, damage, injury, cost or expense sustained by the Council's employees or agents or by any Council or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a breach or negligent performance or failure or delay in performance of this agreement by the Supplier.

## During the term of this agreement and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £10 million and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.

## The provisions of this **Clause** 11 shall survive termination of this agreement, however arising.

# Confidentiality and the Supplier's property

## The Supplier undertakes that it shall not at any time disclose to any person any In-put Material, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Council, its employees, agents, consultants or subcontractors, or any other confidential information concerning the Council's business or its products which the Supplier may obtain, except as permitted by **Clause** 12.2.

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

### to the Supplier's Team and to such of its other employees, agents, consultants or subcontractors as need to know it for the purpose of discharging the Supplier's obligations to the Council. The Supplier shall ensure that its employees, agents, consultants or subcontractors to whom it discloses the Council's confidential information comply with this **Clause** 12; and

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

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

## All In-put Materials, Council's Equipment and all other materials, equipment and tools, drawings, specifications and data supplied by the Council to the Supplier shall, at all times, be and remain as between the Council and the Supplier the exclusive property of the Council, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Council. They shall not be disposed of or used other than in accordance with the Council's written instructions or authorisation.

# Anti-bribery

## The Supplier shall:

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

### not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

### comply with the Council's Ethics and Anti-bribery Policy annexed to this agreement at **Schedule 5** as the Council may update them from time to time (Relevant Policies);

### have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and **Clause** 13.1(b), and will enforce them where appropriate;

### promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;

### immediately notify the Council (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier, and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this agreement;

### within 2 months of the date of this agreement, and annually thereafter, certify to the Council in writing signed by an officer of the Supplier, compliance with this **Clause** 13 by the Supplier and all persons associated with it under **Clause** 13.2. The Supplier shall provide such supporting evidence of compliance as the Council may reasonably request.

## The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this **Clause** 13 (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Council for any breach by such persons of any of the Relevant Terms.

# Data Protection

## In this **Clause** the terms **Controller**, **Processor**, **Data Subject**, Personal **Data Breach**, **Data Protection Officer** take the meaning given in the GDPR.

**Data Protection Legislation:**

(a) the General Data Protection Regulations 2018, The Data Protection Act 2018, and any other applicable Law governing the processing of Personal Data and privacy and any subordinate or related legislation;

(b) any guidance, codes of practice or instruction issued by the ICO (or any other relevant regulatory supervisory authority from time to time;

(c ) any replacement to, addition to, or amendment of, any of the foregoing including any national law or regulations constituting a replacement or successor data protection regime to that governed by GDPR; and

(d) any other applicable Laws governing the processing of Personal Data and privacy which may come into force from time to time.

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

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

**Data Subject Access 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.

Personal Data: any information which falls within the definition of “Personal data” under the GDPR supplied by the Council to the Supplier or lawfully obtained by the Supplier during the performance of the Services.

## The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is and will remain the Controller and the Supplier is the Processor in respect of the processing of Personal Data under this Agreement. **Annex 2** **Schedule of Processing, Personal Data and Data** sets out the scope, nature and purpose of the processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

## The Supplier shall notify the Council immediately if it considers that any of the Council’s instructions infringes the Data Protection Legislation.

## The Supplier shall (and shall procure that any of its Care Staff involved in the processing of Personal Data shall) comply with its obligations under the Data Protection Legislation which arise in connection with this Agreement.

## Notwithstanding the general obligation in **Clause 14.3**, where the Supplier is processing Personal Data as a Processor for the Council:

### The Supplier shall only process the Personal Data in accordance with this Agreement, and in particular **Annex 2**, and on documented instructions from the Council, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Council before processing the Personal Data unless prohibited by Law;

### The Supplier shall ensure that persons authorised to process the Personal Data;

#### have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

#### 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 Council, or as otherwise permitted by this Agreement;

#### have undergone adequate training in the use, care, protection and handling of Personal Data and training is kept up-to-date; and

#### are aware of and comply with the Supplier’s duties under this **Clause 14**.

### Taking into account the nature of the data to be protected, the harm that might result from a Data Loss Event, the state of technological development and the cost of implementation the Supplier shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:

#### The pseudonymisation and encryption of Personal Data;

#### The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

#### The ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;

#### A process of regular testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

### In assessing the appropriate level of security referred to in **Clause (c)** above, account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed,

## The Supplier shall not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

### The Supplier or the Council has provided appropriate safeguards in relation to such transfer;

### The Data Subject has enforceable rights and effective legal remedies;

### 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; and

### The Supplier complies with reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data.

## Subject to **Clause 14.7** the Supplier shall notify the Council immediately if it:

### Receives a Data Subject Access Request (or purported Data Subject Access Request);

### Receives a request to rectify, block or erase any Personal Data;

### Receives any other request, complaint or communication relating to either party’s obligations under the Data Protection Legislation;

### Receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

### becomes aware of a Personal Data breach;

### 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

### Becomes aware of a Data Loss Event.

## The Supplier’s obligation to notify under **Clause 14.6** shall include the provision of further information to the Council in phases, as details become available.

## Taking into account the nature of the processing, the Supplier shall provide the Council with full assistance and co-operation in relation to either party’s obligations under Data Protection Legislation and any complaint, communication or request made under **Clause 14.6** (and insofar as possible within the timescales reasonably required by the Council including by promptly providing:

### The Council with full details and copies of the complaint, communication or request:

### Such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

### The Council, at its request, with any Personal Data it holds in relation to a Data Subject;

### Assistance as requested by the Council following any Data Loss Event;

### Assistance as requested by the Council with respect to any request from the Information Commissioner’s Office, or any consultation by the Council with the Information Commissioner’s Office.

## The Supplier shall maintain complete and accurate records and information to demonstrate compliance with **this Clause 14** and allow for audits, including inspections, conducted by the Council or another auditor mandated by the Council.

## The Council shall designate a Data Protection Officer if required by the Data Protection Legislation.

## The Council does not consent to the Supplier appointing any third party processor of Personal Data under this Agreement.

## At the choice of the Council, the Supplier shall delete or return all the Personal Data to the Council at the end of Term and delete existing copies unless applicable Law requires storage of the Personal Data.

## The Supplier shall indemnify the Council in full in respect of all claims, demands, losses and liabilities of the Council which arise from any breach of the provisions of **this Clause 14**.

# Freedom of Information

## The Supplier acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and cooperate with its disclosure obligations.

## The Supplier shall provide all necessary information and assistance as reasonably requested by the Council to enable the Council to respond to any request for information within the time for compliance set out in FOIA or EIR.

## The Council shall be responsible for determining in its absolute discretion whether the terms of this agreement or any other information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or EIR and save in the case of manifest error the Supplier shall not challenge the Council's determination.

## The Supplier acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA, be obliged to disclose information without consulting or obtaining consent from the Supplier, or having taken the Supplier's views into account.

# Termination

## Subject to **Clause** 2.3 and **Clause** 16.2, this agreement shall terminate automatically on completion of the Project in accordance with the Work Programme.

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

### the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than [28] days after being notified in writing to make such payment;]

### the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [14] days after being notified in writing to do so;

### the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

### the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;

### the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

### a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

### an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

### the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

### a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

### a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;

### any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in **Clause** 16.2(d) to **Clause** 16.2(j) (inclusive);

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

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

### any warranty given by the other party in **Clause** 7 of this agreement is found to be untrue or misleading; or

### If the Council does not approve the proposed Work Programme(s) in accordance with **Clause 3.2**.

## For the purposes of **Clause** 16.2(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

### a substantial portion of this agreement; or

### any of the obligations set out in **Clause** 13,

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

# Consequences of termination

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

### all In-put Material and all copies of information and data provided by the Council to the Supplier for the purposes of this agreement. The Supplier shall certify to the Council that it has not retained any copies of In-put Material or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in **Clause** 12; and

### all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the Council (to the extent that they have not already done so by virtue of **Clause** 10.1), who shall be entitled to enter the premises of the Supplier to take possession of them.

## If the Supplier fails to fulfil its obligations under **Clause** 17.1, then the Council may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.

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

### **Clause** 10;

### **Clause** 11;

### **Clause** 12;

### **Clause** 14; and

### **Clause** 33.

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

# Remedies

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

### to rescind this agreement; or

### to refuse to accept the provision of any further Services by the Supplier and to require the immediate repayment by the Supplier of all sums previously paid by the Council to the Supplier under this agreement; or

### to require the Supplier, without charge to the Council, to carry out such additional work as is necessary to correct the Supplier's failure; and

### in any case, to claim such damages as it may have sustained in connection with the Supplier's breach (or breaches) of this agreement not otherwise covered by the provisions of this **Clause** 18.

# Inadequacy of damages

Without prejudice to any other rights or remedies that the Council may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Supplier. Accordingly, the Council shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

# Force majeure

The Council reserves the right to defer the date for performance of, or payment for, the Services, or to terminate this agreement, if it is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or other industrial disputes (whether involving the workforce of the Council or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

# Assignment and other dealings

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

## The 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.

# Variation

Subject to, **Clause** 5 no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

# Waiver

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

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

## A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

# Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

# Severance

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

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

# Entire agreement

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

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

# Conflict

If there is an inconsistency between any of the provisions of this agreement, The Work Programme and The Proposal respectively, the provisions of this agreement shall prevail in preference to Work Programme and The Proposal, and the provisions of Work Programme shall prevail over the provisions of the Proposal.

# No partnership or agency

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

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

# Third party rights

No one other than a party to this agreement shall have any right to enforce any of its terms.

# Notices

## For the purposes of this **Clause**, but subject to **Clause** 30.7, notice includes any other communication.

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

### shall be in writing and in English or accompanied by an accurate translation into English;

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

### shall be sent to the party for the attention of the contact and at the address, listed in **Clause** 30.3;

### shall be sent by a method listed in **Clause** 30.5; and

### unless proved otherwise is deemed received as set out in **Clause** 30.5 if prepared and sent in accordance with this **Clause**.

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

|  |  |  |
| --- | --- | --- |
| **Party** | **Contact** | **Address** |
| The Supplier | [POSITION OF CONTACT] | [ADDRESS] |
| The Council | Head of Legal and Democratic Services | North Somerset Council, Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ |

## A party may change its details given in the table in **Clause** 30.3 by giving notice, the change taking effect for the party notified of the change at 11.00 am on the later of:

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

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

## This table sets out:

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

### for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this **Clause** have been satisfied and subject to the provisions in **Clause** 30.6:

|  |  |
| --- | --- |
| **Delivery method** | **Deemed delivery date and time** |
| Delivery by hand. | On signature of a delivery receipt or at the time the notice is left at the address. |
| Pre-paid first class post or other next working day delivery service providing proof of delivery. | 11.00 am on the Second Business Day after posting or at the time recorded by the delivery service. |

## For the purpose of **Clause** 30.5 and calculating deemed receipt:

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

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

## This **Clause** does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

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

# Counterparts

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

## No counterpart shall be effective until each party has executed and delivered at least one counterpart.

# Multi-tiered dispute resolution procedure

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

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

### if the [EMPLOYEE TITLE] of the Supplier and the CCTV Manager of the Council are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the [SENIOR OFFICER TITLE] of the Supplier and Director of People and Communities of the Council who shall attempt in good faith to resolve it; and

### if the [SENIOR OFFICER TITLE] of the Supplier and Chief Executive of the Council are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than [28] days after the date of the ADR notice.

## The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under **Clause** 34 which **Clause** shall apply at all times.

# Governing law

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

# Jurisdiction

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

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

1. Services

Specification – means

A. The Council’s Technical Performance Specification dated [***27 November 2018***] attached;

and

B. the Specific Camera Location Requirements [attached?]

.]

1. Works Programme

Work Programme – [provided by the Supplier in accordance with clause 3]

Programme Milestones

1. Pricing
2. Prices for capital items

To be inserted

1. Prices for revenue items

To be inserted

.]

1. Authorised Service Recipients

**The following Town Councils:**

* Nailsea
* Weston-super-Mare
* Portishead
* Clevedon

1. Council Ethics and Anti-bribery Policy

[INSERT THE COUNCIL'S ANTI-BRIBERY POLICY]

|  |  |
| --- | --- |
| Signed by [NAME OF DIRECTOR]  for and on behalf of [NAME OF SUPPLIER] | .......................................  Director |
| Signed by [NAME OF DIRECTOR]  for and on behalf of [NAME OF COUNCIL] | .......................................  Director |

1. Annex [1] Proposal

**Annex (2) Data Processing Schedule**

**PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | ***Providing care and support to vulnerable adults in their own home which will include:***   * ***Assessment of need*** * ***Risk assessment*** * ***Giving details of other organisations and agencies that may be able to assist and making referrals*** |
| Duration of the processing | ***During the term of the Contract Agreement*** |
| Nature and purpose of the processing | ***The collection, recording, storage, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction of Personal Data for the Objectives*** |
| Personal Data | ***Name, address, date of birth, gender, email, telephone number, next of kin*** |
| Special Categories of Data | * ***Ethnicity/Nationality*** * ***Social care needs*** * ***Health conditions*** * ***Health needs*** * ***Behavioural history*** * ***Accommodation history and current living arrangements, including home ownership and tenure*** * ***Information relating to Personal circumstance.*** |
| Categories of Data Subject | * ***Adults (18+)*** * ***Other Persons with involvement (professional or otherwise) with adults noted above.*** |
| 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 | ***Provided as part of the Contract Agreement between the Funder and the Recipient*** |

**END OF SCHEDULE**