

**DATED**

21 OCTOBER 2022

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**(1) THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE**

**AND**

**(2) ANTI-GRAFFITI SYSTEMS LIMITED**

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**CONCESSION CONTRACT FOR THE  
PROVISION OF PEST CONTROL SERVICES  
AND SUPPLIES**

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This agreement is made on the 21 day of OCTOBER 2022

## **Parties**

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE** of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (**the "Council"**)
- (2) **ANTI-GRAFFITI SYSTEMS LIMITED** incorporated and registered in England and Wales with company number 04375020 whose registered office is at Unit D Prospect House, The Hyde Business Park, Brighton, East Sussex, BN2 4JE (**the "Contractor"**).

Altogether the known as the "Parties"

## **BACKGROUND**

- (A) The Council is seeking the provision of pest control services within its administrative area within East Kent (the 'Services').
- (B) The Contractor offered to provide the Services and the Council accepted the Contractor's offer.
- (C) The Contractor shall provide the Services for a period as set out in this Agreement

## **Agreed terms**

### **OPERATIVE PROVISIONS:**

#### **1. Definitions and Interpretations**

- 1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

"Agreement" means this agreement between the Council and the Contractor consisting of these clauses and any attached Schedules, the Invitation to Tender, the Contractor's Tender Response and any other documents (or parts thereof) specified by the Council.

"Approval" and "Approved" means the written consent of the Contract Manager.

“Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

“Commencement Date” means 1 October 2022

“Commercially Sensitive Information” means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule in Schedule 4 comprised of information:

(a) which is provided by the Contractor to the Council in confidence for the period set out in that Schedule; and/or

(b) that constitutes a trade secret.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 2018 and the Commercially Sensitive Information.

“Confidentially Sensitive Information Schedule” means the Schedule containing a list of Commercially Sensitive Information

“Contract Manager” means the person for the time being appointed by the Council as being authorised to administer the Agreement on behalf of the Council or such person as may be nominated by the Contract Manager to act on its behalf.

“Contract Year” means the period of one year commencing on the Commencement Date or any anniversary thereof and concluding on the day before the next anniversary of the Commencement Date

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 other than the Council.

“Contractor’s Representative” means the individual authorised to act on behalf of the Contractor for the purposes of the Agreement.

“Council Property” means any property, other than real property, issued or made available to the Contractor by the Council in connection with the Agreement.

“Council Services” means the additional services which are to be provided free of charge to the Council by the Contractor as set out in the Specification.

“Default” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

“Equipment” means the Contractor’s equipment, plant, materials, and such other items supplied and used by the Contractor in the performance of its obligations under the Agreement.

“Directive” means the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

“Environmental Information Regulations” means the Environmental Information Regulations 2004.

“Extension” means the extension of the duration of the Agreement agreed in accordance with clause 2

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Contractor’s Staff or any staff of any sub-contractor.

“Good Industry Practice” means using standards, practices, methods and procedures conforming to the law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“Information” has the meaning given under section 84 of the Freedom of Information Act 2000.

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Invitation to Tender” means an invitation for contractors to bid for the Services required by the Council.

“Law” means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.

“Month” means calendar month.

“Party” means a party to the Agreement and “Parties” shall be construed accordingly.

“Premises” means any premises occupied by the Council or any User where Services are to be performed, as specified in the Specification.

“Pricing Schedule” means the Schedule containing details of the User Fees as set out in Schedule 2 .

“Quality Standards” means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, that a skilled and experienced operator engaged in the same type of industry or business as the Contractor would reasonably and ordinarily be expected to comply as supplemented by the Specification.

“Regulatory Bodies” means those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party contractor appointed by the Council from time to time, to provide any services which are substantially similar to any of the Services, and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement, whether those services are provided by the Council internally and/or by any third party.

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

“Schedule” means a schedule attached to the Agreement.

“Services” means the Council Services and the User Services to be provided by the Contractor as specified in the Specification.

“Specification” means the description of the Services to be provided under the Agreement and attached as the Specification Schedule in Schedule 1.

“Specification Schedule” means the Schedule containing details of the Specification.



“Staff” means all persons employed by the Contractor to perform the Agreement together with the Contractor’s servants, agents and sub-contractors used in the performance of the Agreement.

“Tax” means value added tax.

“Tender” means the Contractor’s response to the Invitation to Tender.

“Term” means the period of duration of the Agreement in accordance with clause 2.1.

“Transferring Employees”: means an employee of any person (including the Council) whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out the contract between the Council and the Contractor, a contract of employment with someone other than the Council;

“Transfer Date”: the date on which a transfer of employment in accordance with the Regulations takes place

“Users” means any person who contacts the Contractor for the User Services in accordance with this Agreement

“User Fees” means the fees recoverable by the Contractor in relation to the provision of the User Services as set out in the Pricing Schedule

“User Satisfaction Survey” has the meaning given to it in clause 48.1

“User Services” means the pest control services (as set out in the Specification) to be provided by the Contractor to the Users from time to time.

“Variation” has the meaning given to it in 33.1

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London

1.2 In the Agreement except where the context otherwise requires:

(a) the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;

- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the masculine include the feminine and the neuter;
- (d) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (f) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- (h) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

## **Term**

- 2.1 The Contract shall commence on the Commencement Date and shall subject to clause 2.2 expire automatically on the third anniversary of the Commencement Date unless it is terminated in accordance with the Agreement or otherwise lawfully terminated.
- 2.2 Subject to satisfactory performance by the Contractor during the Term, the Council may (in its absolute discretion) elect, by notice in writing, its wish to extend the Agreement for a further period of up to one (1) year. The Council may approach the Contractor if it wishes to do so before the end of the Term. During the Extension, the obligations under the Agreement shall continue (subject to any Variation) or adjustment to the fees pursuant to clause 18 until the expiry of the relevant Extension

### **3 Contractor's Status (Principal)**

3.1 In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Council.

3.2 Accordingly:

(a) the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Council; and

(b) nothing in the Agreement shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of the Agreement or by negligence on the part of the Council, the Council's employees, servants or agents.

### **4 Council's Obligations**

4.1 Save as otherwise expressly provided, the obligations of the Council under the Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Council to the Contractor.

4.2 The Council shall otherwise carry out the duties specified in the Specification /Invitation to Tender

### **5 Entire Agreement**

5.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

5.2 In the event of and only to the extent of any conflict between the body of the Agreement, Specification, Invitation to Tender, Contractor's Response to Tender and other documents referred to or attached to the Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- (1) the body of the Agreement shall prevail over;
- (2) the Schedules;
- (3) the Invitation to Tender;
- (4) the Contractor's Tender
- (5) any other document referred to in the Agreement.

Unless expressly agreed, a document varied pursuant to clause 33 shall not take higher precedence than specified here.

5.3 The Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

## **6 Scope of Agreement**

6.1 Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Council and the Contractor.

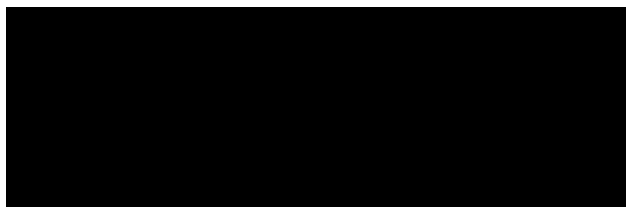
## **7 Notices**

7.1 Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

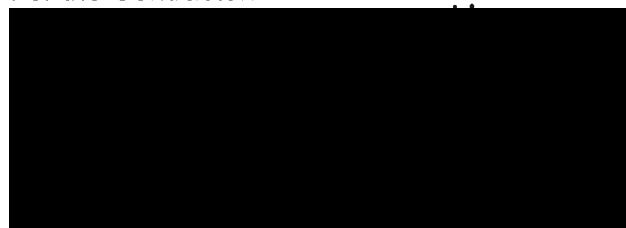
7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

7.3 For the purposes of clause 7.2, the address of each Party shall be:

(a) For the Council:



(b) For the Contractor:



7.4 Either Party may change its address for service by serving a notice in accordance with this clause.

## **8 Mistakes in Information**

8.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Council by the Contractor in connection with the provision of the Services and shall pay the Council any extra costs occasioned by any discrepancies, errors or omissions therein.

## **9 Conflicts of Interest**

9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of the Council there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Council under the provisions of the Agreement. The Contractor will disclose to the Council full particulars of any such conflict of interest which may arise.

9.2 The provisions of this clause shall apply during the continuance of the Agreement and for a period of two years after its termination

## **10 Joint and Several**

10.1 Where the Contractor comprises more than one person or entity, all obligations on the part of the Contractor shall be joint and several.

## **11 The Services**

11.1 The Contractor shall provide the User Services to the Users during the Term in accordance with the Specification and the terms of the Agreement in consideration of the payment of the User Fees.

11.2 The Contractor shall also provide the Council Services during the Term in accordance with the Council's requirements as set out in the Specification and the terms of the Agreement free of charge to the Council.

11.3 This Agreement is intended to regulate the manner in which the Contractor will deliver the Services and the User Services as between the Council and the Contractor. However, for the benefit of doubt:

11.3.1 nothing in this Agreement shall give any User enforceable rights against the Contractor and all User Services provided will be undertaken in accordance with the Contractor's standard terms of business ( or such other terms as the Contractor may agree with any User).

11.3.2 nothing in this Agreement shall require the Council to pay the Contractor for the delivery by the Contractor of the User Services. No concession payments shall be made by the Council to the Contractor nor by the Contractor to the Council in relation to this Contract.

11.4 The Parties agree that all work to be carried out by the Contractor to the Council free of charge as set out in the Specification shall be due consideration and as concession for this Agreement.

11.5 The Council shall have the power to inspect and examine the performance of the Services at the Council's Premises at any reasonable time or, provided that the Council gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

11.6 The Contractor shall at all times deliver the Services in accordance with the Law.

- 11.7 In the event that the Council notifies the Contractor of the Council's reasonably held opinion that any part of the Services do not meet the requirements of the Agreement or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Council, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Council.

## **12 Manner of Carrying Out the Services**

- 12.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.
- 12.2 All Equipment brought onto the Premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- 12.3 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 12.4 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the services in order to leave the Premises in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible to the Council or the User ( as the case may be) for making good any damage to the Premises or any objects contained thereon, which is caused by the Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors.

## **13 Standard of Work**

- 13.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body and the Contractor shall undertake its obligations in accordance with Good Industry Practice.

- 13.2 The Contractor warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.
- 13.3 The signing by the Contract Manager ( or his representative) of time sheets or similar documents shall not be construed as implying the Contractor's compliance with the Agreement.

#### **14 Contractor's Staff**

- 14.1 The Council reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any Premises
- (a) any member of the Staff; or
  - (b) any person employed or engaged by a sub-contractor, agent or servant of the Contractor
- whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.
- 14.2 If and when directed by the Council, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Agreement to any premises occupied by or on behalf of the Council or any User, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Council may reasonably desire.
- 14.3 The Contractor's Staff, engaged within the boundaries of any Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- 14.4 The decision of the Council as to whether any person is to be refused access to any Premises occupied by or on behalf of the Council shall be final and conclusive and the Contractor shall bear the cost of and fully indemnify the Council in respect of any loss or liability arising from any notice, instruction or decision of the Council in relation to this clause.



## **15 Sub-Contracting for the delivery of the Services**

- 15.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

## **16 Fees**

- 16.1 The Contractor acknowledges that individual Users will be responsible for paying the Contractor directly for User Services properly rendered. Accordingly the Contractor will seek to recover User Fees from the Users who have commissioned them and the Council shall have no responsibility to pay any unpaid User Fees.
- 16.2 The Contractor shall submit a quarterly report of all the Services provided carried out during the Term.

## **17 Recovery of Sums Due**

- 17.1 Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Council in respect of any breach of the Agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Council.
- 17.2 Any overpayment by either Party, whether of the price or of Tax, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 17.3 The Contractor shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Contractor.

## **18 Fees adjustment**

18.1 The Contractor may by notice in writing to the Council request for an adjustment of fees (Fees Adjustment Notice) to reflect the market conditions. A Fees Adjustment Notice shall be accompanied by evidence to support the Contractor's contention that fees should be adjusted

18.2 The Parties' representatives shall:

18.2.1 meet within 30 working days of the date of the service of the Fees Adjustment Notice to consider the application;

18.2.2 having due regard to the evidence consider whether the current level of fees is competitive with respect to prevailing market conditions: and

18.2.3 if (acting reasonably and in good faith) they conclude that the current level of fees is too high or too low, agree an appropriate adjustment

18.3.1 If the Parties are unable to agree upon adjustment to the fees at the meeting referred to in clause 18.2 the matter shall be determined by negotiation or mediation in accordance with the provisions of clause 50.

18.3.2 The Contractor shall be entitled to serve no more than one Fees Adjustment Notice in any Contract Year and may only serve any such notice after the first year anniversary of the Contract.

## **19 Change of Law**

19.1 The Contractor shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the fees as the result of a Change in Law

## **20 Anti Bribery, Fraud and Corruption**

- 20.1 The Council may cancel the contract and recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council or if the like acts shall have been done by any person employed by him/her or acting on his/her behalf (whether with or without the knowledge of the Contractor) or if in relation to any contract with the Council the Contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) Local Government Act 1972.
- 20.2 Any clause limiting the Contractor's liability does not apply to this anti-corruption clause.

## **21 Equality and Diversity**

- 21.1 Throughout the duration of this contract the Contractor shall, and in addition shall ensure that its sub-contractors shall, perform and discharge their obligations under this Contract and perform the Services in accordance with:
- 21.1.1 all applicable equality laws, statutes, regulations and statutory Codes of Practice in force from time to time (whether in relation to race, sex, gender, reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - 21.1.2 the Council's equality and diversity policy as provided to the Contractor from time to time or published on the Council's website; and
  - 21.1.3 any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law.

21.2 The Contractor shall:

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

21.2.2 not discriminate directly or indirectly against any person because of their colour, race, nationality or ethnic or national origin in decisions to recruit, train, promote, discipline or dismiss employees; and

21.2.3 for purposes of ensuring compliance with its obligations, duties and responsibilities hereunder, observe as far as possible the provisions of the Code of Practice on Racial Equality in Employment and other Codes of Practice issued from time to time by the Equality and Human Rights Commission under the Equality Act 2010 or otherwise.

21.3 Where in connection with this contract the Contractor, its agents or sub-contractors or the Contractor's staff are required to carry out work on any Premises, the Contractor shall, to the extent required to comply with this Clause 21, comply also with the Council's Equality and Diversity Policy in force from time to time

21.4 The Contractor shall:

21.4.1 monitor the representation among Contractor staff of persons of different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics or successor body); and

21.4.2 where it appears to the Contractor that any racial group is under-represented in the Contractor's staff by comparison with the proportion of members of that racial group known or believed to be engaged in similar trade or trades in the relevant area, the Contractor shall, so far as it is not prohibited from doing so by the Equality Act 2010 or otherwise undertake the following actions as may be appropriate:

(a) the placing of job advertisements designed to reach members of such racial groups and to encourage their applications;

(b) the inclusion in job advertisements of the following statement (or of a statement carrying the same or a similar meaning): 'We are an

equal opportunities Council and encourage applicants from racial groups which are currently under-represented';

- (c) the use of employment agencies and careers offices in areas where members of such racial groups live and work;
- (d) the promotion of recruitment schemes for school-leavers designed to reach members of such racial groups;
- (e) the provision of appropriate training and encouragement to members of Contractor staff from such racial groups to apply for promotion or transfer to positions where such racial groups are under-represented.

21.5 Where the Contractor commits a breach of this Clause 21 this would amount to a failure to meet the standard of work referred to in Clause 13 and the remedies in clause 35 shall apply.

21.6 The Contractor shall notify the Contract Manager forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the Equality Act 2010 or any legislation amending or replacing same ('the Act').

21.7 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with matters referred to in the Contract being in contravention of the Act, the Contractor shall free of charge:

21.7.1 provide any information requested in the timescale allotted;

21.7.2 attend any meetings as required and permit Contractor's staff to attend;

21.7.3 promptly allow access to and investigation of any documents or data deemed to be relevant;

21.7.4 allow itself and any Contractor staff to appear as witness in any ensuing proceedings; and

21.7.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

- 21.8 Where any investigation is conducted or proceedings are brought which arise directly or indirectly out of any act or omission of the Contractor, its agents or Sub-Contractors, or the Contractor's staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.
- 21.9 In the event that the Contractor enters into any sub contract in connection with this Contract, it shall impose obligations on its Sub Contractors in terms substantially similar to those imposed on it pursuant to this Clause 21.
- 21.10 The Contractor shall in providing the Services comply with the provisions of the Equality Act 2010 or any act amending or replacing the same.

## **22 The Contracts (Rights of Third Parties) Act 1999**

- 22.1 No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Council or the Contractor) shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this clause 22. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that 1999 Act.

## **23 Health and Safety**

- 23.1 The Contractor shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of the Agreement. The Council shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of the Agreement.
- 23.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of Staff and other persons working on those Premises.

- 23.3 The Contractor shall notify the Council immediately in the event of any incident occurring in the performance of the Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 23.4 The Contractor 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 Premises in the performance of the Agreement.
- 23.5 The Contractor 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.

## **24 Safeguarding children and vulnerable adults**

- 24.1 The Parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 24.2 The Contractor shall:
- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (as defined by the Safeguarding Vulnerable Groups Act 2006.) (DBS); and
  - (b) monitor the level and validity of the checks under this clause 24.2 for each member of Staff.
  - (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Users.
- 24.3 The Contractor warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from the activity in accordance

with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

- 24.4 The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 24 have been met.
- 24.5 The Contractor shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to Users.

## **25 Data Processing Agreement**

- 25.1 This Data Processing Agreement (Agreement) sets out the additional terms, requirements, and conditions on which the Contractor will process Personal Data when providing services under the Contract. This Agreement contains the mandatory clauses required by Article 28(3) of the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) for contracts between controllers and processors known as UK GDPR.

## **AGREED TERMS**

### **25.2 Definitions and Interpretation**

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

#### **25.2.1 Definitions:**

**Authorised Persons:** the persons or categories of persons the Council authorises to process personal data in accordance with the data processing instructions as identified in **Error! Bookmark not defined.**SCHEDULE 3 and whom the Contractor agrees solely to accept such instructions from.

**Business Purposes:** the services to be provided by the Contractor to the Council as described in the Contract and any other purpose specifically identified in **Error! Bookmark not defined.****Error! Reference source not found.**

**Commissioner:** the Information Commissioner (see Article 4(A3), UK GDPR and section 114, DPA 2018).



**Data Protection Legislation:**

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Council or Contractor is subject, which relates to the protection of personal data.

**Data Subject:** the identified or identifiable living individual to whom the Personal Data relates.

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

**EEA:** the European Economic Area.

**Personal Data:** means any information relating to an identified or identifiable living individual that is processed by the Contractor on behalf of the Council as a result of, or in connection with, the provision of the services under the Contract; an identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

**Processing, processes, processed, process:** any activity that involves the use of the Personal Data. It includes, but is not limited to, any operation or set of operations which is performed on the Personal Data or on sets of the Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring the Personal Data to third-parties.

**Personal Data Breach:** a breach of security leading to the accidental, unauthorised or unlawful destruction, loss, alteration, disclosure of, or access to, the Personal Data.

**Processor:** a natural or legal person, public authority, agency or other body which processes personal data on behalf of the Controller.

**Records:** has the meaning given to it in Clause 25.13.

**Term:** this Agreement's term as defined in Clause 25.11.

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

This Agreement is subject to the terms of the Contract. Interpretations and defined terms set forth in the Contract apply to the interpretation of this Agreement.

The schedules form part of this Agreement and will have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.

### **25.3 Personal data types and processing purposes**

25.3.1 The Council and the Contractor agree and acknowledge that for the purpose of the Data Protection Legislation:

- (a) That each Council is its own independent Controller, and the Contractor is the Processor for each Council.
- (b) the Council retains control of the Personal Data they are Controller of and remain responsible for its compliance obligations under the Data Protection Legislation, including but not limited to, providing any required notices and obtaining any required consents, and for the written processing instructions it gives to the Contractor.
- (c) **Error! Bookmark not defined.****Error! Reference source not found.** describes the subject matter, duration, nature and purpose of the processing and the Personal Data categories and Data Subject types in respect of which the Contractor may process the Personal Data to fulfil the Business Purposes.

### **25.4 Contractor's obligations**

25.4.1 The Contractor will only process the Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with the Council's written instructions. The Contractor will not process the Personal Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Legislation. The Contractor must promptly notify the Council if, in its opinion, the Council's instructions do not comply with the Data Protection Legislation.

25.4.2 The Contractor must comply promptly with any of the Council's written instructions requiring the Contractor to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.

25.4.3 The Contractor will maintain the confidentiality of the Personal Data and will not disclose the Personal Data to third-parties unless the Council or this Agreement specifically authorises the disclosure, or as required by domestic law, court or regulator (including the Commissioner). If a domestic law, court or regulator (including the Commissioner) requires the Contractor to process or disclose the Personal Data to a third-party, the Contractor must first inform the Council of such legal or regulatory requirement and give the Council an opportunity to object or challenge the requirement, unless the domestic law prohibits the giving of such notice.

25.4.4 The Contractor will reasonably assist the Council, at no additional cost to the Council, with meeting its compliance obligations under the Data Protection Legislation, taking into account the nature of the Contractor's processing and the information available to the Contractor, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with the Commissioner under the Data Protection Legislation.

25.4.5 The Contractor must notify the Council promptly of any changes to the Data Protection Legislation that may reasonably be interpreted as adversely affecting the Contractor's performance of the Contract or this Agreement.

25.4.6 The Contractor will only collect Personal Data for the Council using a notice or method that the Council specifically pre-approves in writing, which contains an approved data privacy notice informing the Data Subject of the Council's identity, the purpose or purposes for which their Personal Data will be processed, and any other information that, having regard to the specific circumstances of the collection and expected processing, is required to enable fair processing. The Contractor will not modify or alter the notice in any way without the Council's written consent.

## **25.5 Contractor's employees**

25.5.1 The Contractor will ensure that all of its employees:

(a) are informed of the confidential nature of the Personal Data and are bound by written confidentiality obligations and use restrictions in respect of the Personal Data;

(b) have undertaken training on the Data Protection Legislation and how it relates to their handling of the Personal Data and how it applies to their particular duties; and

(c) are aware both of the Contractor's duties and their personal duties and obligations under the Data Protection Legislation and this Agreement.

25.5.2 The Contractor will take reasonable steps to ensure the reliability, integrity and trustworthiness of all of the Contractor's employees with access to the Personal Data.

## **25.6 Security**

25.6.1 The Contractor must at all times implement appropriate technical and organisational measures against accidental, unauthorised or unlawful processing, access, copying, modification, reproduction, display or distribution of the Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data.

25.6.2 The Contractor must implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:

(a) the pseudonymisation and encryption of personal data;

(b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

(c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and

(d) a process for regularly testing, assessing and evaluating the effectiveness of the security measures.

## **25.7 Personal data breach**

25.7.1 The Contractor will within 24 hours and in any event without undue delay notify the Controller in writing if it becomes aware of:

- (a) the loss, unintended destruction or damage, corruption, or unusability of part or all the Personal Data. The Contractor will restore such Personal Data at its own expense as soon as possible.
- (b) any accidental, unauthorised or unlawful processing of the Personal Data; or
- (c) any Personal Data Breach.

25.7.2 Where the Contractor becomes aware of (a), (b) and/or (c) above, it will, without undue delay, also provide the Controller with the following written information:

- (a) description of the nature of (a), (b) and/or (c), including the categories of in-scope Personal Data and approximate number of both Data Subjects and the Personal Data records concerned;
- (b) the likely consequences; and
- (c) a description of the measures taken or proposed to be taken to address (a), (b) and/or (c), including measures to mitigate its possible adverse effects.

25.7.3 Immediately following any accidental, unauthorised or unlawful Personal Data processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. Further, the Contractor will reasonably co-operate with the Controller at no additional cost to the Controller, in handling the matter, including but not limited to:

- (a) assisting with any investigation;
- (b) providing the Council with physical access to any facilities and operations affected;
- (c) facilitating interviews with the Contractor's employees, former employees and others involved in the matter including, but not limited to, its officers and directors;
- (d) making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Council; and
- (e) taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or accidental, unauthorised or unlawful Personal Data processing.

25.7.4 The Contractor will not inform any third-party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a Personal Data Breach without first obtaining the Controller's written consent, except when required to do so by domestic law.

25.7.5 The Contractor agrees that the Controller has the sole right to determine:

- (a) whether to provide notice of the accidental, unauthorised or unlawful processing and/or the Personal Data Breach to any Data Subjects, the Commissioner, other in-scope regulators, law enforcement agencies or others, as required by law or regulation or in the Council's discretion, including the contents and delivery method of the notice; and
- (b) whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

25.7.6 The Contractor will cover all reasonable expenses associated with the performance of the obligations under clause 25.7.1 to clause 25.7.3 unless the matter arose from the Controller's specific written instructions, negligence, wilful default or breach of this Agreement, in which case the Controller will cover all reasonable expenses.

25.7.7 The Contractor will also reimburse the Controller for actual reasonable expenses that the Controller incurs when responding to an incident of accidental, unauthorised or unlawful processing and/or a Personal Data Breach to the extent that the Contractor caused such, including all costs of notice and any remedy as set out in Clause 25.7.5.

## **25.8 Cross-border transfers of personal data**

25.8.1 The Contractor (and any subcontractor) must not transfer or otherwise process the Personal Data outside the UK or, the EEA without obtaining the Council' prior written consent.

## **25.9 Subcontractors**

25.9.1 The Contractor may not authorise any third party or subcontractor to process the Personal Data.

25.9.2 Other than those subcontractors as set out in **Error! Bookmark not defined.Error! Reference source not found.**, the Contractor may not authorise any other third-party or subcontractor to process the Personal Data.

25.9.3 Those subcontractors approved as at the commencement of this Agreement are as set out in **Error! Bookmark not defined.Error! Reference source not found.**. The Contractor must list all approved subcontractors in Schedule 3 and include any subcontractor's name and location and the contact information for the person responsible for privacy and data protection compliance.

25.9.4 Where the subcontractor fails to fulfil its obligations under the written agreement with the Contractor which contains terms substantially the same as those set out in this Agreement, the Contractor remains fully liable to the Council for the subcontractor's performance of its agreement obligations.

25.9.5 The Parties agree that the Contractor will be deemed by them to control legally any Personal Data controlled practically by or in the possession of its subcontractors.

25.9.6 On the Council's written request, the Contractor will audit a subcontractor's compliance with its obligations regarding the Personal Data and provide the Council with the audit results. Where the Council concludes reasonably that the subcontractor is in material default of its obligations regarding the Personal Data, the Council may in writing instruct the Contractor to instruct the subcontractor to remedy such deficiencies within 14 days.

## **25.10 Complaints, data subject requests and third-party rights**

25.10.1 The Contractor must, at no additional cost to the Council, take such technical and organisational measures as may be appropriate, and promptly provide such information to the Council as the Council may reasonably require, to enable the Council to comply with:

- (a) the rights of Data Subjects under the Data Protection Legislation, including, but not limited to, subject access rights, the rights to rectify, port and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
- (b) information or assessment notices served on the Council by the Commissioner or other relevant regulator under the Data Protection Legislation.

25.10.2 The Contractor must notify the Council immediately in writing if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation.

25.10.3 The Contractor must notify the Council within 7 days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their other rights under the Data Protection Legislation.

25.10.4 The Contractor will give the Council, at no additional cost to the Council, its full co-operation and assistance in responding to any complaint, notice, communication or Data Subject request.

25.10.5 The Contractor must not disclose the Personal Data to any Data Subject or to a third-party other than in accordance with the Council's written instructions, or as required by domestic law.

## **25.11 Term and termination**

25.11.1 This Agreement will remain in full force and effect so long as:

- (a) the Contract remains in effect; or
- (b) the Contractor retains any of the Personal Data related to the Contract in its possession or control (**Term**).

25.11.2 Any provision of this Agreement that expressly or by implication should come into or continue in force on or after termination of the Contract in order to protect the Personal Data will remain in full force and effect.

- 25.11.3 The Contractor's failure to comply with the terms of this Agreement is a material breach of the Contract. In such event, the Council may terminate any part of the Contract involving the processing of the Personal Data effective immediately on written notice to the Contractor without further liability or obligation of the Council.
- 25.11.4 If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its Contract obligations, the parties may agree to suspend the processing of the Personal Data until that processing complies with the new requirements. If the parties are unable to bring the Personal Data processing into compliance with the Data Protection Legislation 14 days, the Council or the Contractor may terminate the Contract with immediate effect on written notice to the other party.

## **25.12 Data return and destruction**

- 25.12.1 At the Council's request, the Contractor will give the Council, or a third-party nominated in writing by the Council, a copy of or access to all or part of the Personal Data in its possession or control.
- 25.12.2 On termination of the Contract for any reason or expiry of its term, the Contractor will securely delete or destroy or, if directed in writing by the Council, return and not retain, share, all or any of the Personal Data related to this Agreement in its possession or control.
- 25.12.3 If any law, regulation, or government or regulatory body requires the Contractor to retain any documents, materials or Personal Data that the Contractor would otherwise be required to return or destroy, it will notify the Council in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must retain, the legal basis for such retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.
- 25.12.4 The Contractor will certify in writing to the Council that it has deleted or destroyed the Personal Data within 7 days after it completes the deletion or destruction.

## **25.13 Records**

- 25.13.1 The Contractor will keep detailed, accurate and up-to-date written records regarding any processing of the Personal Data, including but not limited to, the access, control and security of the Personal Data, approved subcontractors, the processing purposes, categories of processing, and a general description of the technical and organisational security measures referred to in Clause 25.6.1 (Records).
- 25.13.2 The Contractor will ensure that the Records are sufficient to enable the Council to verify the Contractor's compliance with its obligations under this Agreement and the Data Protection Legislation and the Contractor will provide the Council with copies of the Records upon request.

25.13.3 The Council and the Contractor must review the information listed in the Annexes to this Agreement at least once a year to confirm its current accuracy and update it when required to reflect current practices.

#### **25.14 Audit**

25.14.1 The Contractor will permit the Council and its third-party representatives to audit the Contractor's compliance with its Agreement obligations, on at least 21 days' notice, during the Term. The Contractor will give the Council and its third-party representatives all necessary assistance to conduct such audits at no additional cost to the Council. The assistance may include, but is not limited to:

- (a) physical access to, remote electronic access to, and copies of the Records and any other information held at the Contractor's premises or on systems storing the Personal Data;
- (b) access to and meetings with any of the Contractor's personnel reasonably necessary to provide all explanations and perform the audit effectively; and
- (c) inspection of all Records and the infrastructure, electronic data or systems, facilities, equipment or application software used to process the Personal Data.

25.14.2 The notice requirements in Clause 25.14.1 will not apply if the Council reasonably believes that a Personal Data Breach has occurred or is occurring, or the Contractor is in material breach of any of its obligations under this Agreement or any of the Data Protection Legislation.

25.14.3 If a Personal Data Breach occurs or is occurring, or the Contractor becomes aware of a breach of any of its obligations under this Agreement or any of the Data Protection Legislation, the Contractor will:

- (a) promptly conduct its own audit to determine the cause;
- (b) produce a written report that includes detailed plans to remedy any deficiencies identified by the audit;
- (c) provide the Council with a copy of the written audit report; and
- (d) remedy any deficiencies identified by the audit within 7 days.

25.14.4 At least once a year, the Contractor will conduct site audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under this Agreement, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognised third-party audit firm based on recognised industry best practices.

25.14.5 On the Council's written request, the Contractor will make all of the relevant audit reports available to the Council for review. The Council will treat such audit reports as the Contractor's confidential information under the Contract.



25.14.6 The Contractor will promptly address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by the Contractor's management.

### **25.15 Warranties**

25.15.1 The Contractor warrants and represents that:

- (a) its employees, subcontractors, agents and any other person or persons accessing the Personal Data on its behalf are reliable and trustworthy and have received the required training on the Data Protection Legislation;
- (b) it and anyone operating on its behalf will process the Personal Data in compliance with the Data Protection Legislation and other laws, enactments, regulations, orders, standards and other similar instruments;
- (c) it has no reason to believe that the Data Protection Legislation prevents it from providing any of the Contract's contracted services; and
- (d) considering the current technology environment and implementation costs, it will take appropriate technical and organisational measures to prevent the accidental, unauthorised or unlawful processing of Personal Data and the loss or damage to, the Personal Data, and ensure a level of security appropriate to:
  - i. the harm that might result from such accidental, unauthorised or unlawful processing and loss or damage;
  - ii. the nature of the Personal Data protected; and
  - iii. comply with all applicable Data Protection Legislation and its information and security policies, including the security measures required in Clause 25.6.1.

25.15.2 The Council warrants and represents that the Contractor's expected use of the Personal Data for the Business Purposes and as specifically instructed by the Council will comply with the Data Protection Legislation.

### **25.16 Indemnification**

25.16.1 The Contractor agrees to indemnify, keep indemnified and defend at its own expense the Council against all costs, claims, damages or expenses incurred by the Council or for which the Council may become liable due to any failure by the Contractor or its employees, subcontractors or agents to comply with any of its obligations under this Agreement and/or the Data Protection Legislation.

### **25.18 Notice**

25.16.2 Any notice or other communication given to a party under or in connection with this Agreement must be in writing and either sent by post or sent by email to the address or email address in this Agreement.

25.16.3 Clause 25.16.2 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.

## **26 Confidentiality**

26.1 Each Party:-

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

26.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Agreement:

- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
- (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Agreement.

26.3 The Contractor shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Agreement.

26.4 The provisions of clauses 26.1 to 26.3 shall not apply to any Confidential Information received by one Party from the other:

- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or

- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 35.

26.5 Nothing in this clause shall prevent the Council:

- (a) disclosing any Confidential Information for the purpose of:
  - (i) the examination and certification of the Council's accounts; or
  - (ii) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:
  - (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
  - (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Agreement;

provided that in disclosing information under sub-paragraph (b) the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

26.6 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

26.7 The obligations under this Clause 26 shall survive the expiry or termination of this Agreement for a period of three years

## **27 Freedom of Information**

- 27.1 The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council (at the Contractor's expense) to enable the Council to comply with these Information disclosure requirements.
- 27.2 The Contractor shall and shall procure that its sub-contractors shall:
- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
  - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working 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 Environmental Information Regulations.
- 27.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
  - (b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 27.4 The Contractor 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 Environmental Information Regulations to disclose Information:
- (a) without consulting with the Contractor, or
  - (b) following consultation with the Contractor and having taken its views into account.

27.5 The Contractor shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

27.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 26.4.

## **28 Publicity and Media**

28.1 Without prejudice to the Council's obligations under the FOIA, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).

28.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 28.1 by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 28.1 by its sub-contractors.

## **29 Intellectual Property Rights**

29.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

(a) furnished to or made available to the Contractor by the Council shall remain the property of the Council;

(b) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Agreement shall belong to the Council and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Contractor may obtain in performing the Agreement except information which is in the public domain.

- 29.2 The Contractor shall obtain Approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Council a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
- 29.3 It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Term on written demand indemnify and keep indemnified the Council against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:
- (a) designs furnished by the Council;
  - (b) the use of data supplied by the Council which is not required to be verified by the Contractor under any provision of the Agreement.
- 29.4 At the termination of the Agreement the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held, including any back-up media.
- 29.5 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

### **30 Audit and the Audit Commission**

- 30.1 The Contractor shall keep and maintain until six years after the Agreement has been completed, or as long a period as may otherwise be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Council, and all payments made by the Council . The Contractor shall on request afford the Council or the Council's representatives or the Audit Commission such access to those records as may be required by the Council or the Audit Commission in connection with the Agreement.

### **31 Assignment and Sub-Contracting**

- 31.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Agreement or any part of it without prior Approval. Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Agreement.
- 31.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 31.3 Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Council, be sent by the Contractor to the Council within 2 Working Days of such request.

### **32 Waiver**

- 32.1 The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.
- 32.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 7.
- 32.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

### **33 Variation of the Services**

- 33.1 The Council reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever PROVIDED THAT such addition, omission or variation does not amount to a material change to the Specification. Such a change is hereinafter called "a Variation".

- 33.2 Any such Variation shall be communicated in writing by the Contract Manager to the Contractor's Representative in accordance with the notice provisions of clause 7. All Variations shall be in the form of an addendum to the Agreement.
- 33.3 In the event of a Variation the fees may also be varied. Such Variation in the fees shall be agreed in writing by the Parties and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of clause 50
- 33.4 The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

#### **34 Severability**

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

#### **35 Remedies in the event of inadequate performance**

- 35.1 Where a complaint is received or a problem indicated in any User Satisfaction Survey about the standard of Services or about the way any Services or the User Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Agreement, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with the provisions of clause 43 of the Agreement.
- 35.2 In the event that the Council is of the reasonable opinion that there has been a material breach of the Agreement by the Contractor, or the Contractor's performance of its obligations under the Agreement has failed to meet the requirement set out in the Specification Schedule, then the Council may, without prejudice to its rights under clause 50 of the Agreement, do any of the following:



- (a) without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Council that the Contractor will be able to perform such part of the Services in accordance with the Agreement;
- (b) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the fees shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
- (c) terminate, in accordance with clause 43, the whole of the Agreement.

35.3 The Council may charge to the Contractor any cost reasonably incurred by the Council and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Council or by a third party and the Council shall use its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

35.4 If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Council and such failure is capable of remedy, then the Council shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Council may direct.

35.5 In the event that:

- (a) the Contractor fails to comply with clause 35.4. above and the failure, is materially adverse to the interests of the Council or prevent the Council from discharging a statutory duty; or

- (b) the Contractor persistently fails to comply with clause 35.4 above,

the Council reserves the right to terminate the Agreement by notice in writing with immediate effect.

## **36 Remedies Cumulative**

36.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **37 Monitoring of Performance**

37.1 The Contractor shall comply with the monitoring arrangements set out in Specification including, but not limited to, providing such data and information as the Contractor may be required to produce under the Agreement.

## **38 Novation**

38.1 The Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Council, private sector body or any other body established under statute provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Agreement.

38.2 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of this Agreement.

38.3 The Council shall be entitled to disclose to any transferee any Confidential Information of the Contractor which relates to the performance of the Agreement by the Contractor. In such circumstances the Council shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the transferee accepts an obligation of confidence.

## **39 Indemnity and Insurance**

39.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

39.2 The Contractor shall indemnify and keep indemnified the Council fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, claims brought by any User in connection with any User Services, or any other loss which is

caused directly or indirectly by any act or omission of the Contractor. This clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or sub-contractors, or by any circumstances within its or their control.

- 39.3 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- 39.4 Without limiting the generality of clause 39.3, the Contractor shall hold
- (a) employer's liability insurance in respect of Staff with a limit of indemnity of not less than £5,000,000 (five million pounds) such limits to apply to each and every one claim or a series of claims arising from a single event.
  - (b) public/products liability insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) such limits to apply to each and every one claim or a series of claims arising from a single event.
- 39.5 The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 39.6 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Agreement the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 39.7 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 39.2.
- 39.8 The Council shall be entitled, without prejudice to its existing rights and remedies, upon the failure of the Contractor to maintain the insurance referred to in this Clause 39, to terminate this Contract

## **40 TUPE**

- 40.1 The Contractor accepts and undertakes that when it tendered for (and entered into) this Contract it has taken into consideration the provisions of the Directive and the Regulations and has considered the application or otherwise of those provisions to this Contract and has taken the appropriate action required under the Directive and/or the Regulations.
- 40.2 The Council and the Contractor agree that the transfer of the Services (where applicable) to be effected by this Contract is governed by Transfer of Undertaking (Protection of Employment) Regulations 1996 (the Regulations) and accordingly:
- 40.2.1 the Council shall use reasonable endeavours to request that the existing Contractor of services similar to the Services transfers, on the Transfer Date, the contract of employment for each of the Transferring Employees to the Contractor (save insofar as such contracts relate to any occupational pension schemes);
- 40.2.2 on termination of the Contract for whatever reason or expiry of the Term, the Contractor shall discharge all wages salaries and honoraria excluding accrued holiday remuneration (if any) of the Transferring Employees and all other costs and expenses relating to the Transferring Employees for the period from and including the Transfer Date) and will pay over all deductions properly made therefrom to the relevant authority (including but not limited to taxation and national insurance); and
- 40.2.3 subject to the Data Protection Act 2018, the Council shall provide to the Contractor such information as may be reasonably required to comply with the Regulations, including without limitation:
- (a) the number of personnel, including supervisory and administrative personnel employed by the Council in the provision of the Services;
  - (b) the terms and conditions of employment of those personnel; and
  - (c) any other information in relation to those personnel as may properly be required by the Contractor under this Clause.
- 40.3 The Contractor shall at its own cost undertake all liability for and shall fully indemnify the Council against:
- 40.3.1 all losses, claims, damages and costs which may be brought against the Council as a consequence of the Contractor's failure to consider fully the application of the Directive and Regulations to this Contract and/or have taken the appropriate action required under the Directive and Regulations and arising from the letting of this Contract; and
- 40.3.2 all reasonable costs, expenses, damages, compensation, fines and other liabilities in connection with any claim arising from a cause of action occurring on or subsequent to the Transfer Date by all or any of the Transferring Employees as a result of their employment with the Contractor.

- 40.4 On the termination of the Contract for whatever reason or on the expiry of the Term, the Contractor shall supply within seven (7) days of demand by the Council all such information as the Council shall consider to be required as a result of the Directive and the Regulations, including without limitation:
- 40.4.1 the number of personnel, including supervisory and administrative personnel, employed by the Contractor and any sub-contractor employed in the provision of the Services;
  - 40.4.2 the terms and conditions of employment of those personnel; and
  - 40.4.3 any other information in relation to those personnel as may properly be required by the Council under this Clause.
- 40.5 The Contractor shall indemnify the Council against any liability in law which the Council may incur by reason of a failure to supply such information within a reasonable time, or by reason of any inaccuracies in such information.
- 40.6 Prior to the termination of this Contract (or any part of this Contract) for whatever reason, the Contractor shall comply with any applicable provisions of the Regulations and the Directive including (but not limited to) the requirements with regard to consultation of affected employees pursuant to Directive Article 6 and Regulation 10 of the Regulations in respect of any transfer of an undertaking (which maybe so held by any Court or Tribunal) arising at the end of the Term or on any earlier termination of the Contract (or any part of the Contract) for whatever reason. The Contractor shall indemnify and hold harmless the Council against all claims whatsoever and howsoever arising which may at any time arise out of the failure on the part of the Contractor to comply with the requirements of this Clause.
- 40.7 If at the termination of the Agreement for whatever reason (apart from cause for termination being a result of a material breach of the Agreement by the Contractor) the Services cease to be provided by the Contractor and are neither taken back in-house nor transferred to a third party Contractor, then the Contractor shall use its best endeavours to re-deploy employees previously engaged in the performance of the contract. If having taken all such steps the Contractor dismisses exclusively on the grounds of redundancy any of the employees previously employed by the Council in the provision of the Services, the Council shall (subject to the Contractor consulting and obtaining the written consent of the Council before making such employees redundant, such consent not to be unreasonably withheld) reimburse the Contractor that amount of an employee's redundancy payments which have been properly incurred and are exclusively attributable to that employee's period of employment with the Council.
- 40.8 In addition to the provisions contained in Clause 407 above, the Parties agree that if during the Term staffing levels are reduced exclusively as a consequence of redundancy of employees, the Council shall (subject to the Contractor consulting and obtaining the written consent of the Council before making such employees redundant, such consent not to be unreasonably withheld) reimburse the Contractor such amount of an employee's redundancy payments which have been properly incurred and are exclusively attributable to that employee's period of employment by the Council. The Contractor accepts liability for all redundancy payments pertaining to the length of service of the relevant employee with the Contractor.

40.9 The Contractor shall undertake to include in any sub-contract specific provisions which provide equivalent obligations upon each sub-contractor to those accepted by the Contractor under this Contract and which provide for enforcement by:

- (a) Transferring Employees; and/or
- (b) the Council

directly against the sub-contractor and preserving their rights under the Contracts (Rights of Third Parties) Act 1999. Copies of all sub-contracts (un-priced) shall be provided to the Council upon sub-contract award. The Contractor shall indemnify and hold harmless the Council against all claims, whatsoever and howsoever arising, which may at any time arise out of the failure on the part of the Contractor to comply with the requirements of this Clause.

40.10 The Contractor shall not during the final twelve (12) months of the Term or during the final twelve months of any extension to this Agreement:

- (a) Undertake a reorganisation of staff employed in the performance of this contract or working methods other than in accordance with a scheme that has been submitted to and approved in writing by the Council.
- (b) Award any pay rise which exceeds the annual rate of inflation without first having obtained the written consent of the Council.
- (c) Agree or implement any alteration to the terms and conditions on which staff are employed on the contract without first having obtained the written consent of the Council.

#### **41 Warranties and Representations**

41.1 The Contractor warrants and represents that:

- (a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Contractor;
- (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice;
- (c) all obligations of the Contractor pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.

## **42 Termination on change of control and insolvency**

42.1 The Council may terminate the Agreement by notice in writing with immediate effect where:

- (a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Agreement; or
- (b) the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or
- (c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
- (d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) any similar event occurs under the law of any other jurisdiction.

42.2 The Contractor shall notify the Contract Manager immediately when any change of control occurs. The Council may only exercise its right under clause 42.1(a) within six months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made the date that the Council becomes aware of the change of control;

but shall not be permitted to do so where an Approval was granted prior to the change of control of the Contractor.

42.3 If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Council shall be entitled to terminate the Agreement by notice to the Contractor or the Contractor's Representative with immediate effect.

#### **43 Termination on Default**

43.1 The Council may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Council within 25 Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Council, capable of remedy; or
- (c) the Default is a material breach of the Agreement.

43.2 or if the Council is of the opinion that the Contractor:

- (a) has abandoned the Agreement; or
- (b) without reasonable excuse has failed to commence the Services in accordance with the Agreement or has suspended the progress of the services; or
- (c) despite previous warnings by the Council in writing has failed to proceed with the Services with due diligence or is otherwise persistently in breach of its duties under this Agreement; or
- (e) is guilty of grave misconduct or wilful neglect in the discharge of its duties under this Agreement; or
- (f) is guilty of any act which brings the Council into disrepute or which in the Council's reasonable opinion, is prejudicial to its interests.

#### **44 Break**

44.1 The Council shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving three Months' written notice to the Contractor.



## **45 Disruption**

- 45.1 The Contractor shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Council, its employees or any other contractor employed by the Council.
- 45.2 The Contractor shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.

## **46 Recovery upon Termination**

- 46.1 Save as otherwise expressly provided in this Agreement:
- (a) termination of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
  - (b) termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Council under clause 13 (Standard of Work), 17(Recovery of Sums Due), 20(Prevention of Corruption), 25 (Data Protection ), 26(Confidentiality), 28 (Publicity and Media), 29 (Intellectual Property Rights), 30 (Audit), 36 (Remedies Cumulative), 39 (Indemnity and Insurance), 40 (TUPE), 41 (Warranties and Representations), 43(Termination on Default), 46 (Recovery on Termination) and 49 (Governing Law).
- 46.2 At the end of the Term (and howsoever arising) the Contractor shall forthwith deliver to the Council upon request all the Council's Property (including but not limited to materials, documents, information, access keys) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Council may recover possession thereof and the Contractor grants licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

46.3 At the end of the Term (howsoever arising) and/ or after the Term the Contractor shall provide assistance to the Council and any new contractor appointed by the Council to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress. Where the end of Term arises due to the Contractor's default, the Contractor shall provide such assistance free of charge. Otherwise the Council shall pay the Contractor's reasonable costs of providing the assistance, and the Contractor shall take all reasonable steps to mitigate such costs.

## **47 Force Majeure**

47.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 6 Months, either Party may terminate the Agreement by notice in writing with immediate effect.

47.2 Any failure or delay by the Contractor in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

47.3 Clause 47 does not affect the Council's rights under clause 46.

47.4 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause 47.2 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

47.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Agreement shall be any event qualifying for Force Majeure hereunder.

## **48 User Satisfaction Survey**

- 48.1 From time to time the Council may request that the Contractor should conduct a User Satisfaction Survey to assess the level of satisfaction among Users with the Contractor's delivery of the User Service ( at such times and dates to be agreed by the parties) the purpose of which shall include assessing the level of satisfaction among users of Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services;
- 48.2 The User Satisfaction Survey shall be undertaken by means of distributing to users of the Services within 10 Working Days of such request being made by the Council a questionnaire or other survey method as agreed between the Parties in a form to be agreed with the Council (acting reasonably).
- 48.3 The Contractor agrees that the content of the questionnaire or other material to be used for any other survey method referred to in clause 48.2 and the method of undertaking the User Satisfaction Survey shall be carried out in an open, honest and transparent manner and shall comply with the Law and it shall be the responsibility of the Contractor to ensure that all the processes required in obtaining the information as set out in this Clause 48 complies with all applicable Law.
- 48.4 Within one month of carrying out the User Satisfaction Survey, the Contractor shall prepare a summary of the results of the User Satisfaction Survey in such form as the Council shall reasonably require and promptly upon a written request from the Council (having obtained the clear and unambiguous written consent from the User that such details will be shared with the Council) shall provide such further details (including copies of all returned questionnaires and/or any other survey material used by the Contractor as the Council shall reasonably require.
- 48.5 Where a User Satisfaction Survey returns a result of 10% or more Users being dissatisfied or worse from a sample of not less than 30 Users, such result shall be treated as a Default requiring remedy under clause 43.1(a)
- 48.6 Any second or subsequent repetition of such a result shall be treated as a material breach under clause 43.1(c)

## **49 Governing Law**

49.1 The Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.

## **50 Dispute Resolution**

50.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.

50.2 If the dispute cannot be resolved by the Parties pursuant to Clause 50.1, the dispute may, by agreement between the Parties, be referred to mediation pursuant to Clause 50.4 hereof.

50.3 The provision of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Clause 50.2 hereof.

50.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

50.4.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon the identity of the Mediator within 14 days after a request by one Party to the other (provided that there remains agreement for mediation), or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator;

50.4.2 the Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;

50.4.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

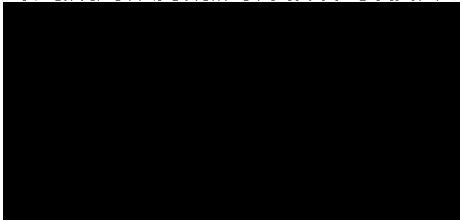
- 50.4.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by both the Council and the Contractor;
- 50.4.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties;
- 50.4.6 if the Parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

**IN WITNESS** whereof the Agreement has been signed and delivered on the date and year stated at the beginning of this Agreement.

For and on behalf of **THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE**



For and on behalf of **ANTI-GRAFFITI SYSTEMS LIMITED**



27/9/22

Managing Director

## **SCHEDULE 1 SPECIFICATION SCHEDULE**

## APPENDIX A - SPECIFICATION

### SPECIFICATION OF WORK AND STANDARDS RELATING TO THE CONCESSION CONTRACT FOR PEST CONTROL SERVICES

The contractor shall undertake all pest control treatment and administration and will take payments as agreed in the pricing schedule directly from Customers (Council residents). These payments shall fund the contract and no payments shall be made from the Council's to the Contractor.

Prices for treatments of pests outside those agreed in the pricing schedule are to be set by the Contractor independently.

The Council's will promote the use of the successful Pest Control Contractor via their respective websites and relevant departments. In exchange, the Contractor will provide a fixed price pest control service to residents, alongside the additional services to the Council's specified in this specification document.

The additional services to the Council's are defined as free treatments of

- mosquito larvae and/or Brown tailed moths (up to four officer days per Council's per annum),
- educational work/presentations to forums (up to two officer days per Council's per annum)
- and maintenance of up to 50 bait boxes (per Council's per annum).

### **GENERAL OBLIGATIONS**

- (a) The Contractor shall designate a competent person(s) with good management and supervisory experience to be responsible for the overall operation and performance of the Services in accordance with the Contract. That person(s) shall liaise as appropriate with the Authorised Officer as the need arises for the efficient management of the Services. The Contractor shall inform the Authorised Officer of the name of this person(s) and of any relevant changes from time to time.
  - (b) The Contractor shall ensure that the person(s) designated by the Contractor to be responsible for the overall operation and performance of the Contract shall as and when called upon so to do submit a full written report to the Council's or other appropriate Committee on the performance achieved by the Contractor including details of any significant problems or difficulties that have arisen and action taken or to be taken in relation thereto. The Contractor's representative may be required to attend the appropriate Council's or Committee meeting to present his report and/or answer any relevant questions relating to the Contract.
2. The Contractor or his representative shall liaise with the Environmental Protection Department at the District Council's by:

Telephone, email and/or meetings to be agreed with the Council's Authorised Officer.



3. The Contractor shall maintain clear and comprehensive written records of all work carried out pursuant to the Contract and the Contractor shall provide to the Council's any information relating to the performance of the Services which the Council's requires to enable it to comply with its obligations under Part 1 of the Local Government Act 1992.
4.
  - (a) Unless agreed with the Customer, the contractor shall ensure that all non-emergency works under this specification document shall be completed within 2 Business Days of receipt, counting the day of receipt as the first day if received before 15.00 hours.
  - (b) The Contractor shall, unless otherwise agreed with the Authorised Officer, respond to all Emergency requests for the Services within not more than six hours of notification (hereinafter referred to as "the six-hour emergency response time") whether or not:
    - (I) the request is received outside "Normal Business Hours".
    - (II) the day/days immediately following the day on which such notification was given is/are not Business Day/Days.and shall immediately confirm to the Council's (if appropriate through the Council's Duty Officer who is on call outside Normal Working Hours) when the emergency request has been responded to.
  - (c) For the purposes of this specification all requests for Services to respond to 'live' rat(s) present within rooms in domestic dwellings shall be treated as emergency requests. All other requests for the Services shall be deemed to be non-emergency requests unless otherwise specifically agreed with the Contractor.
5.
  - (a) The Contractor and the Council's shall give notice to each other of the change or acquisition of any relevant address, e-mail address or telephone, number at the earliest possible opportunity but in any event within 24 hours of such change or acquisition.
  - (b) The Contractor shall maintain a 24 hour on any day telephone answering service to receive emergency requests for the Services.
  - (c) The Contractor shall ensure that the Contractor's representative provides and maintains at the Contractor's expense a mobile phone per operative contact in order that he/she may be contacted by the Council's at any time between the hours of 0800 and 1700 on each Business Day.
6. Quarterly review meetings will take place (in person or remotely as agreed) between the Contractor and the Council's (to be organised by the Contract Manager) where the Contractor will be required to provide a quarterly report detailing their performance (in line with the KPI's set out at the bottom of this Specification) which shall include as a minimum.
  - (I) Date and time of initial pest control request

- (II) Pest Type
- (III) Date and time of initial visit
- (IV) Date and time resolved
- (V) Pest eradicated Y/N
- (VI) Overall cost per customer treatment

The Contractor shall also provide a quarterly report detailing any complaints which shall include as a minimum: -

- (I) Date and time of complaint
- (II) Date and time resolved
- (III) Outcome

7. The Contractor shall carry out risk assessments in line with the Health and Safety At Work etc. Act 1974 and associated regulations, store and keep all dangerous and potentially dangerous materials and equipment properly secure, under proper supervision and clearly and correctly identified so as not to endanger any person, animal or thing other than any pest which is to be the subject of specific control. The Contractor shall as and when required supply a written statement of its Control of Substances Hazardous to Health assessment and provide Material Safety Data Sheets for all products used in connection with the Contract, to the Council's.
8. Only pesticides subject to current approvals and consents shall be used and the methods of use shall comply with the procedures laid down by the Control of Pesticides Regulations 1986 (as amended 1997) or such other relevant statutes and Regulations as may be in force. The Council's reserves the right unanimously to prohibit or restrict the use of certain pesticides, notwithstanding that they may have been cleared under the Regulations. Crush and tamper proof bait boxes shall be used in hazardous, potentially hazardous or high-risk situations including domestic and school kitchens. The Contractor shall leave a relevant safety information sheet at each treatment to explain the treatment and any precautions required by the occupier.  
  
There is a legal requirement when undertaking work on behalf of the Council's that the contractor must ensure, and demonstrate, the correct use of rodenticide under stewardship of The Campaign for Responsible Rodenticide Use 'CRRU'.
9. The Contractor shall provide a means of identification approved by the Council's which the Contractor shall ensure is carried by all persons performing Services under the Contract. This means of identification and any relevant authorisation provided by the Council's shall be produced whenever requested by members of the public or the Council's.
10. The Contractor shall use such motor vehicles in the performance of this Contract as are in the opinion of the Council's Authorised Officer suitable for their intended use in the performance of the Contract. The Contractor shall ensure that an appropriate alternative motor vehicle is available for use as and when required in connection with

the Contract in the event that any particular motor vehicle is withdrawn from service for maintenance or by reason of breakdown and shall thereby ensure that any requisite standard of service is consistently maintained.

11. The Contractor shall provide adequate and suitable protective clothing for persons employed by him for the performance of the Services and shall ensure that during the performance of the Services such persons are at all times appropriately dressed in order to carry out their functions in a professional manner.
12. The Contractor will collect all charges for pest control. The Contractor shall maintain such records of cash receipts and payments as may be required by the Council's. No other monies whatsoever shall be demanded by the Contractor from the public for the services provided in the agreed pricing schedule.
13. The Contractor shall be a member of the British Pest Control Association (or other relevant professional body). The Contractor must ensure that staff that carry out pest control services are competent and trustworthy. The minimum requirement is Level 2 BPOC/RSPH Certificate in Pest Control, (or as deemed equivalent by the Council's) which must be held by any person providing the service.

**WORKS UNDER THIS SPECIFICATION SHALL BE CARRIED OUT BY THE CONTRACTOR AT THE REQUEST OF THE CUSTOMER OR THE COUNCIL'S**

**Control of Rats and Mice**

The Contractor shall upon payment

1. Visit all domestic premises where an infestation of rats and mice is alleged to exist, carry out a survey to determine the extent of the infestation, and carry out any treatment for eradication of the infestation as may be necessary subject, where appropriate, to the payment of the agreed fees or charges as per the pricing schedule. Treatment shall include the removal of carcasses (where reasonably practicable) and old poisoned baits on completion of the treatment.
2. Where the Contractor's investigation confirms the presence of rats or mice and the complainant, or any other person responsible for the land upon which the infestation is found, declines or refuses to pay the necessary charge for the treatment, report the matter to the Authorised Officer on the next Business Day in order that the Authorised Officer may take such action as he considers necessary.
3. Maintain and regularly service such permanent baiting points as may be specified by the Authorised Officer. The commitment of the Contractor under the Schedule for this activity shall be limited to 50 permanent baiting points per Council's per year.

**Other Pests**

4. Under this specification, the Contractor shall commit gratis to up to twelve working days per year (4 days per authority) for treatment, including materials, specified by the Council's, which may include:

- a) The treatment and control of mosquito larvae on marshland as and when considered to be necessary by the Authorised Officer and shall be carried out by the Contractor working in pairs and/or;
  - b) The treatment, removal and disposal of Brown Tail Moths and webs.
5. Investigate and carry out the appropriate treatment for the eradication of fleas (human and animal), bed bugs, cockroaches, wasps and hornets, (treatment of articles and premises only). The costs will be detailed in the agreed pricing schedule.
  6. Any other pest not listed in the agreed pricing schedule may be treated by the contractor at a price to be agreed between the Customer and the Contractor.

**Miscellaneous Services**

7. At the specific request of the Authorised Officer give advice to members of the public, landlord forums etc., on pest control. The commitment of the Contractor under this Schedule for this activity shall be limited to two business days per year per authority.
8. The contractor shall upon request, assist the Council's in cases of Civil Emergency by the transportation of articles or equipment.
9. Maintain and submit to the Authorised Officer detailed records of work carried out in accordance with the General Obligations section of this specification document.

**Performance Management - Customer**

The Contractor shall:-

- Ensure that the service meets or exceeds the Performance Standards at all times as per the table below.

<b>Performance Standard</b>	<b>Failure to perform</b>	<b>Outcome</b>
All requests for Pest Control Services are responded to in line with this Specification Schedule	Failure to respond within the required time by more than 5% per quarter of all pest type treatment requests	After 2 <sup>nd</sup> failure meeting to discuss performance and continued viability of the Contract
Attend quarterly Meetings with the Council's and provide quarterly reports in line with this Specification Schedule	Failure to attend quarterly meetings and/or provide quarterly reports to required standards more than twice	After 2 <sup>nd</sup> failure meeting to discuss performance and continued viability of the Contract

## **Performance Management - Council**

The Contractor shall:-

- Ensure that the service meets or exceeds the Performance Standards at all times
- Recompense the Council's in relation to failures in performance management for the following additional free services as per the table below:

<b>Performance Standard</b>	<b>Failure to perform</b>	<b>Recompense</b>
Ensure Brown Tail Moths are responded to within 48 hours	Failure to respond within the required time more than twice	Performance meeting after 2nd failure. £100 fine after third failure
Ensure Mosquito's are responded to within 48 hours	Failure to respond within the required time more than twice	Performance meeting after 2nd failure. £100 fine after third failure
Ensure Rat Bait Boxes are responded to withing 72 hours	Failure to respond within the required time more than twice	Performance meeting after 2nd failure. £100 fine after third failure

\*All other response times to be agreed with contractor

## **SCHEDULE 2 PRICING SCHEDULE**

**Folkestone & Hythe**

<b>Pest Control Treatment</b>	<b>Pricing Information</b>	<b>Price</b>	<b>Indicative number of treatments per annum</b>	<b>Cost per annum</b>
Rats	per treatment (usually 3 visits)	£45.00	150	£6,750.00
Mice	per treatment (usually 3 visits)	£45.00	56	£2,520.00
Fleas & Cockroaches	per treatment (2 visits) minimum charge (up to 6 rooms)	£75.00	22	£1,650.00
Ants	per treatment (2 visits)	£50.00	5	£250.00
Bedbugs	per treatment (3 visits) minimum charge (up to 6 rooms)	£110.00	9	£990.00
Wasps & Hornets	for first nest	£45.00	42	£1,890.00
Wasps & Hornets	per additional nest - only available where the nest can be treated without specialist access equipment (up to 8m)	£15.00	0	£0.00
Out of hours rate for emergency works	per visit in addition to the rates above	£42.50	0	£0.00
Industrial/ Commercial	per hour + materials	£50.00	0	£0.00
<b>ANNUAL TOTAL</b>				<b>£14,050.00</b>

### SCHEDULE 3 SCHEDULE OF PROCESSING ACTIVITY

The Contractor shall comply with the data instructions detailed below by the Controllers.

#### Data Controllers

The contact details of **Folkestone & Hythe District Council's** Data Protection Officer are:

  
Folkestone & Hythe District Council  
Civic Centre  
Castle Hill Avenue  
Folkestone  
CT20 2QY

*Email:* [data.protection@folkestone-hythe.gov.uk](mailto:data.protection@folkestone-hythe.gov.uk)

*Tel:* 01303 853252

#### Data Processor

The contact details of the Anti-Graffiti Systems Limited Data Protection Officer are:

Description	Details
Identity of the Controller and Processor	The Council and the Contractor acknowledge that for the purposes of the Data Protection Legislation, the Council are their own individual Controllers, and the Contractor is the Processor for each Council. Personal data will be processed by the Contractor on behalf of the Council in accordance with this agreement.
Subject matter of the processing	Data is required by the Contractor to attend the home or business of the Service User and carry out the pest control treatment. This will include payment details for the service provided, the type of pest treatment requested, the name, address, telephone number and e-mail address of the Service User. The processing is needed to ensure that the Contractor can effectively deliver the contract to provide the service to members of the public.



Duration of the processing	Processing of personal data will take place for the duration of the contract.
Nature and purposes of the processing	<p>The purpose is for the provision of services to the service user. To collect personal data required for the contractor to take payment for and arrange for service provision (ie. to conduct pest control treatments in the homes or businesses of the Service Users) and the use of data for the purpose of carrying out customer satisfaction surveys.</p> <p>The personal data processing operations include the collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means)</p> <p>Personal data shall not be passed to any third parties without the express consent of the Council.</p>
Types of personal data	Data will include payment details for the service provided, the type of pest treatment requested, the name, address, telephone number and e-mail address of the Service User (and any other data required for the purposes of undertaking the service).
Categories of Data Subjects	Staff (including volunteers, agents, and temporary workers), customers/ clients, members of the public / service users,
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	Personal data to be destroyed as soon as operationally practicable by the pest control contractor. Data return and destruction will be dealt with in accordance with clause 25.12 of this agreement.
Approved Subcontractors	

**SCHEDULE 4 COMMERCIALY SENSITIVE INFORMATION SCHEDULE**

**SCHEDULE 5 INVITATION TO TENDER INSTRUCTION**



## **Pest Control Services**

# **Invitation to Tender (ITT) Instruction Document**

**10<sup>th</sup> August 2022**

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**APPENDIX A – SPECIFICATION** **SEE ATTACHED**

**APPENDIX B – PRICING SCHEDULE** **SEE ATTACHED**

**APPENDIX C – TUPE INFORMATION (TO BE PROVIDED ON COMPLETION OF TUPE CONFIDENTIALITY LETTER SECTION 6 OF THE INVITATION TO TENDER RESPONSE DOCUMENT) -**

## SECTION 1 - BACKGROUND & INSTRUCTIONS

### 1.1 INTRODUCTION

- 1.1.1 The Council's, namely Dover District Council, District Council of Folkestone & Hythe and Thanet District Council ("the Councils") are undertaking a joint procurement and wishes to appoint a suitable supplier for the provision of a Concession Contract for Pest Control Services and invites prospective suppliers to submit a Tender to meet the Council's requirements. For the purposes of this ITT and all associated documentation "the Council" will mean one or any of the three Councils indicated at 1.1.2, as context so requires.
- 1.1.2 The packaging of this procurement and evaluation is to identify one supplier **only** to carry out the services across the three Councils. Any subsequent award of contract will be entered into by way of a service concession agreement with individual contracts being entered into between the one successful supplier and each of the Councils, namely:
- Dover District Council
- District Council of Folkestone & Hythe
- Thanet District Council
- 1.1.3 The specific requirements for the above are detailed in the Specification at **APPENDIX A**. It should be noted that by submitting a Tender, you confirm that you understand and can meet these requirements.
- 1.1.4 The Contract is anticipated to commence upon 1<sup>st</sup> October 2022 and will continue for a period of 3 years with the option to extend for a further 12 months (with any agreed extension/s) unless terminated in accordance with the Conditions of the Contract.

### 1.2 ITT TIMETABLE

- 1.2.1 The key dates for this procurement are outlined in the timetable below. Please note this timetable is indicative only. The Council reserves the right to change it at its discretion.

Date	Activity
10 <sup>th</sup> August 2022	ITT Contract Notice Published and All Documents available electronically
31 <sup>st</sup> August 2022	Clarifications Closing Date
7 <sup>th</sup> September 2022	Tender Return Date
15 <sup>th</sup> September 2022	Evaluation Complete
16 <sup>th</sup> September 2022	Successful/Unsuccessful letters issued

1<sup>st</sup> October 2022

Contract Commencement

### 1.3 INSTRUCTIONS

- 1.3.1 **General** – Prospective suppliers should read these instructions carefully before completing the **INVITATION TO TENDER RESPONSE DOCUMENT**. It is the prospective suppliers responsibility to ensure that the document is fully completed, with the requisite supporting information. Failure to comply with these requirements may result in the rejection of their Tender.
- 1.3.2 **Return of Tenders** – Prospective suppliers are required to complete and return the **INVITATION TO TENDER RESPONSE DOCUMENT** via the Kent Business Portal (<https://www.kentbusinessportal.org.uk>) by the closing date as referenced in 1.2.1. No Tender received after the time and date specified shall be considered unless agreed by the Councils authorised officer in exceptional circumstances.
- 1.3.3 **Tender Validity** - Tenders shall remain open for acceptance for 90 days from the Tender Return Date.
- 1.3.4 **Amendments to the ITT** - At any time prior to the deadline for receipt, the Council may amend the ITT document(s). Any such amendment will be notified to all prospective suppliers and where considered necessary, the Council may extend (at its discretion) the Tender Return Date.
- 1.3.5 **Economic Standing and Insurances** – Prospective suppliers must confirm information in this regard as requested within the Invitation to Tender Response Document. Prospective suppliers are not required to submit copies of audited accounts, insurances certificates or company policies with your tender. However, these may be requested prior to progressing any award of contract/entering into contract, if you are successful.
- 1.3.6 **Modification & Withdrawal** – Prospective suppliers may modify or withdraw their Tender via the Kent Business Portal at any time prior to the deadline for receipt.
- 1.3.7 **Councils Right to Reject or Not to Award** - The Council reserves the right to reject any Tender and/or to abort the ITT process at any time and/or not to award the contract to any prospective supplier without incurring any liability to the affected suppliers.
- 1.3.8 **Suppliers Queries** – All enquiries in relation to this ITT should be conducted through the 'Message' function within the Kent Business Portal. The Council will endeavour to answer all requests as quickly as possible, and before the Clarification Closing Date when practicable.
- 1.3.9 **Post Tender Bid Clarification** - The Council may at its discretion seek (or choose not to seek) clarification of any information contained in Tenders from bidders during the evaluation period. It is the responsibility of the bidder(s) from which clarification is sought to provide the requested information within the time specified by the Council when the request for clarification is made. If a bidder does not supply the requested information within the time specified, the Council may

- Disqualify the bidder's Tender (for example, where it relates to a 'pass-fail' question, inability to meet threshold questions or other information essential to the integrity of the overall Tender is omitted); or
- Otherwise disadvantage it (e.g. award a lower score).

A decision by the Council not to seek clarification from a bidder on a particular matter in its Tender should not be inferred by that bidder that the Council is satisfied with the Tender.

- 1.3.10 **Confidentiality** - All information supplied in connection with this ITT shall be regarded as confidential and by submitting a Tender, a prospective supplier agrees to be bound by the obligation to preserve the confidentiality of all such information.
- 1.3.11 **Freedom of Information** – The Council is subject to the provisions of the Freedom of Information Act 2000 and may therefore be required to provide information when requested under the said Act. Prospective suppliers should be aware of this obligation and must specify in their Tender response if there is any information they require to remain confidential or they deem to be commercially sensitive. This will be honoured if authorised by the Act.
- 1.3.12 **Publicity** – No publicity regarding the provision of the goods/services or works or the award of any Contract will be permitted unless and until the Council has given express written consent to the relevant communication.
- 1.3.13 **Transparency**-The Council must comply with transparency obligations imposed upon it as regards publication of information relevant to this procurement process and any contract(s) resulting therefrom. Furthermore, the Council routinely publishes details of its contracts, including the contract values and the identities of its service providers and suppliers, on its website.
- 1.3.14 **Parent Company Guarantee** – The Council reserves the right to require the successful tenderer to provide a Parent Company Guarantee (where applicable) in the form set out in the response document.
- 1.3.15 **TUPE** – Prospective suppliers are advised that the Transfer of Undertakings (Protection of Employment) Regulations 2006 may apply to the provision of the Works/Services and that they may wish to seek their own professional advice. In the event of the Regulations applying to the Works/Services, prospective suppliers will assume the risk of and will be presumed to have knowledge of the consequences of the application of the Regulations.
- 1.3.16 The Council holds the relevant TUPE information pertaining to this Contract supplied by the incumbent contractor. Suppliers wishing to have access to this information should complete, upload and return the **TUPE CONFIDENTIALITY LETTER SECTION 6** of the **INVITATION TO TENDER RESPONSE DOCUMENT** via the 'Message' function within the Kent Business Portal. Upon receipt of the completed TUPE Confidentiality Letter the Council will issue by return the TUPE information.
- 1.3.17 **Data Protection** - The Council processes personal information in accordance with Data Protection Legislation namely the General Data Protection Regulations (*Regulation (EU) 2016/679*), the Law Enforcement Directive (*Directive (EU) 2016/680*), any applicable national implementing Laws as amended from time to



time; the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; all applicable Law about the processing of personal data and privacy. This includes information provided by third parties as part of a procurement exercise. To find out how personal information is processed as part of this procurement exercise please view the Council's Standard Terms and Conditions.

## SECTION 2 - EVALUATION

### 2.1 EVALUATION CRITERIA

- 2.1.1 Offers will be evaluated on the prospective supplier submitting the most economically advantageous Tender (MEAT) based upon a composition of quality and cost.
- 2.1.2 The overall assessment ratio is 40% quality and 60% cost.
- 2.1.3 The weighted quality and cost scores will be added together to identify the most economically advantageous Tender.
- 2.1.4 Where more than one-person marks the Tenders, a consensus scoring mechanism will be used (i.e. the Panel will agree a score for each marked element).
- 2.1.5 Economic and Financial Standing - The Council reserves the right to request further financial information and or request a credit agency report to confirm the organisations economic and financial standing satisfactorily meets the Council's requirements.

### 2.2 QUALITY EVALUATION

- 2.2.1 All questions within the **SUITABILITY QUESTIONNAIRE** (Section 1) must be completed. Responses to the Questionnaire will be evaluated on a pass/fail basis. Any prospective supplier who fails any section of the Questionnaire will be disqualified from the process.
- 2.2.2 Quality will be assessed on the prospective suppliers response to the questions set out in the **INVITATION TO TENDER RESPONSE DOCUMENT**.
- 2.2.3 Where applicable, any prospective supplier who fails any headline questions (pass/fail) will be disqualified from the process.
- 2.2.4 The quality/technical questions will detail/support how a prospective supplier intends to meet the Council's requirements set out in the Specification at **APPENDIX A**. under the following sub criteria: -
  - Q1: Best Practice and Awareness 10%
  - Q2: Operational 10%
  - Q3: Added Value 6%
  - Q4: Innovation 2%
  - Q5: Complaints Procedure 8%

- Q6: Business Continuity 4%
- **Total Quality Ratio 40%**

2.2.5 The quality evaluation will be based on the following scoring methodology:

Assessment	Description	Score
<b>Deficient</b>	Response to the question(s) (or an implicit requirement) significantly deficient or no response received.	0
<b>Inadequate</b>	Inadequate detail provided and some of the questions not answered and/or some of the answers to questions are not directly relevant to the question(s).	1
<b>Limited</b>	Limited information provided, and/or a response that is inadequate or only partially addresses the question(s).	2
<b>Acceptable</b>	An acceptable response submitted in terms of the level of detail, accuracy and relevance.	3
<b>Comprehensive</b>	A comprehensive response submitted in terms of detail and relevance to the question.	4
<b>Superior</b>	As Comprehensive, but to a significantly better degree and a response which goes above and beyond to answer the question.	5

2.2.6 The quality/technical questions will be scored out of a maximum of 5 points each (as above), and used to calculate a weighted score for the respective quality criteria/sub criteria as per the example below.

#### EXAMPLE

Criteria	Weighting	Score (out of 5)	Weighted Score
Criteria A	10%	4	8%

If 'Criteria A' was weighted 10% and the Suppliers response received a score of 4 out of 5 then the following formula would be applied:

$$= (\text{Weighting} / \text{maximum score}) * \text{score awarded} = \text{Criteria awarded \%}$$

$$= (10/5)*4 = 8\%$$

2.2.7 Bidders should note that failure to achieve a score of at least 3 (as described in the scoring methodology) in responding to any of the set questions, may result in their tender being removed from consideration.

## 2.3 PRICE EVALUATION

2.3.1 Price evaluation will be based on the lowest bid received. The lowest bid will receive the full weighted score of 60%. Higher bids will be weighed against the lowest bid using the following formula.

### **(Lowest Bid ÷ Suppliers Bid) × Price Weighting**

2.3.2 The table below shows an example of how this formula would translate if the following bids were placed with an example price weighting of 60%.

#### **EXAMPLE**

	<b>Bid</b>	<b>Weighted Score</b>
<b>Supplier 1</b>	£200,000	60% (maximum price score available)
<b>Supplier 2</b>	£300,000	40%
<b>Supplier 3</b>	£400,000	30%

#### **2.3.3 Abnormally Low or High Bids**

If a price is submitted and is significantly lower/higher than the other Tenderers, further research will be carried out. This is to ensure that the prices submitted are sustainable throughout the contract. In such a scenario you may be asked to justify the prices submitted giving the examples of where these prices have been charged before. We may also take up references or approach consultants for impartial advice. Any bid deemed to be abnormally low/high may be disqualified.

## **2.4 NOTIFICATION**

2.4.1 Once the successful supplier has been identified, they will be notified to this effect. All other suppliers will be notified that they were unsuccessful.

## **SECTION 3 – TENDER RESPONSES**

3.1.1 Prospective suppliers must compile their response using the **INVITATION TO TENDER RESPONSE DOCUMENT** provided.

3.1.2 It should be noted that by submitting a response, you confirm that you understand and can meet the requirements of the Specification.

## **SECTION 4 – PRICE**

4.1.1 Please complete the Price Schedule included in the **INVITATION TO TENDER RESPONSE DOCUMENT**. Prices/rates Tendered are to be in £ Sterling strictly net and inclusive of **all costs** associated with the provision of the Goods/Services/Works to be provided as part of your submission to meet the Council's requirements set out at **APPENDIX A**.

- 4.1.2 Price(s) submitted must be **exclusive** of Value Added Tax. The percentage and amount of Value Added Tax shall, if chargeable, be shown on invoices in accordance with prevailing Customs and Excise Regulations.
- 4.1.3 Prospective suppliers attention is drawn to the nature of this contract and potential VAT implications as follows:
- 4.1.3.1 Under the terms of any arising contract, it shall be the responsibility of the Contractor for any VAT arising from works conducted by the Contractor on behalf of the Customer (Council residents). The Authority will refer Customers to the Contractor via the website as the preferred supplier on a non-monetary basis.
- 4.1.3.2 Under HMRC guidelines this constitutes a barter arrangement, and where applicable, VAT must be accounted for on both transactions although no payments will be exchanged. If applicable the Contractor will be required to raise VAT invoices to recognise the supply of pest control services under the terms of the contract, and also self-billing invoices for the Councils to recognise the income due from customer receipts.
- 4.1.3.3 This information does not constitute professional VAT advice and it is for the Contractor to source their own advice in this regard should they deem necessary
- 4.1.4 Estimated requirements where stated within this ITT are intended for guidance only and cannot be (and are not) guaranteed. Prospective suppliers are requested to submit their best commercial offer based on the information provided.
- 4.1.5 Unless otherwise stated, prices must be fixed (i.e. not subject to variation) for the period of the contract in its entirety.
- 4.1.6 The Council reserves the right to adjust any arithmetical errors it finds in any tender and shall inform the prospective supplier of the adjustment/s, but the Council has no duty to prospective suppliers to find such errors.

## SECTION 5 – TERMS & CONDITIONS

- 5.1.1 The Council's Terms and Conditions of Contract applicable to this ITT are attached (as a separate document) and will apply to any subsequent Contract that may arise.

**SCHEDULE 6 INVITATION TO TENDER RESPONSE DOCUMENT**



Company Name	AGS One
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## Pest Control Services

# Invitation to Tender (ITT) Response Document (with Suitability Questionnaire)

10<sup>th</sup> August 2022

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### **Potential Supplier Information and Exclusion Grounds: Part 1 and Part 2.**

The Suitability Questionnaire is a self-declaration, made by you (the potential supplier), that you do not meet any of the grounds for exclusion<sup>1</sup>. If there are grounds for exclusion, there is an opportunity to explain the background and any measures you have taken to rectify the situation (we call this self-cleaning).

A completed declaration of Part 1 and Part 2 provides a formal statement that the organisation making the declaration has not breached any of the exclusions grounds. Consequently we require all the organisations that you will rely on to meet the selection criteria to provide a completed Part 1 and Part 2. For example these could be parent companies, affiliates, associates, or essential sub-contractors, if they are relied upon to meet the selection criteria. This means that where you are joining in a group of organisations, including joint ventures and partnerships, each organisation in that group must complete one of these self-declarations. Sub-contractors that you rely on to meet the selection criteria must also complete a self-declaration (although sub-contractors that are not relied upon do not need to complete the self-declaration).

When completed, this form is to be sent back to the contact point given in the procurement documents along with the selection information requested in the procurement documentation.

### **Supplier Selection Questions: Part 3**

The procurement document will provide instructions on the selection questions you need to respond to and how to submit those responses. If you are bidding on behalf of a group (consortium) or you intend to use sub-contractors, you should complete all of the selection questions on behalf of the consortium and/or any sub-contractors.

If the relevant documentary evidence referred to in the Selection Questionnaire is not provided upon request and without delay we reserve the right to amend the contract award decision and award to the next compliant bidder.

### **Consequences of misrepresentation**

If you seriously misrepresent any factual information in filling in the Selection Questionnaire, and so induce an Authorities to enter into a contract, there may be significant consequences. You may be excluded from the procurement procedure, and from bidding for other contracts for three years. If a contract has been entered into you may be sued for damages and the contract may be rescinded. If fraud, or fraudulent intent, can be proved, you or your responsible officers may be prosecuted and convicted of the offence of fraud by false representation, and you must be excluded from further procurements for five years.

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<sup>1</sup> For the list of exclusion please see [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/551130/List\\_of\\_Mandatory\\_and\\_Discretionary\\_Exclusions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf)



**PEST CONTROL SERVICES**  
**KBPDOVER-DN627425-93009030**  
**PROCUREMENT PROCEDURE - OPEN**

**Notes for completion**

1. The “Authorities” means the contracting authorities, or anyone acting on behalf of the contracting authorities, that is seeking to invite suitable candidates to participate in this procurement process.
2. “You” / “Your” refers to the potential supplier completing this Suitability Questionnaire i.e. the legal entity responsible for the information provided. The term “potential supplier” is intended to cover any economic operator as defined by the Public Contracts Regulations 2015 (referred to as the “regulations”) and could be a registered company; the lead contact for a group of economic operators; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity.
3. Please ensure that all questions are completed in full, and in the format requested. If the question does not apply to you, please state ‘N/A’. Should you need to provide additional information in response to the questions, please submit a clearly identified annex.
4. The authorities recognises that arrangements set out in section 1.2 of the Suitability Questionnaire, in relation to a group of economic operators (for example, a consortium) and/or use of sub-contractors, may be subject to change and will, therefore, not be finalised until a later date. The lead contact should notify the authorities immediately of any change in the proposed arrangements and ensure a completed Part 1 and Part 2 is submitted for any new organisation relied on to meet the selection criteria. The authorities will make a revised assessment of the submission based on the updated information.
5. For Part 1 and Part 2 every organisation that is being relied on to meet the selection must complete and submit the self-declaration.
6. For answers to Part 3 - If you are bidding on behalf of a group, for example, a consortium, or you intend to use sub-contractors, you should complete all of the questions on behalf of the consortium and/ or any sub-contractors, providing one composite response and declaration.

The authorities confirm that it will keep confidential and will not disclose to any third parties any information obtained from a named customer contact, other than to the Cabinet Office and/or contracting authorities defined by the regulations, or pursuant to an order of the court or demand made by any competent authorities or body where the authorities is under a legal or regulatory obligation to make such a disclosure.

# Part 1: Potential supplier Information

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

Section 1	Potential supplier information	
Question number	Question	Response
1.1(a)	Full name of the potential supplier submitting the information	Anti Graffiti Systems Ltd, trading as AGS One
1.1(b) – (i)	Registered office address (if applicable)	Unit D, Prospect House, Hyde Business Park, Brighton, BN2 4JE
1.1(b) – (ii)	Registered website address (if applicable)	<a href="http://www.agsone.co.uk">www.agsone.co.uk</a>
1.1(c)	Trading status a) public limited company b) limited company c) limited liability partnership d) other partnership e) sole trader f) third sector g) other (please specify your trading status)	b) limited company
1.1(d)	Date of registration in country of origin	15/02/2002
1.1(e)	Company registration number (if applicable)	4375020
1.1(f)	Charity registration number (if applicable)	N/A
1.1(g)	Head office DUNS number (if applicable)	423874119
1.1(h)	Registered VAT number	797521976
1.1(i) - (i)	If applicable, is your organisation registered with the appropriate professional or trade register(s) in the member state where it is established?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>
1.1(i) - (ii)	If you responded yes to 1.1(i) - (i), please provide the relevant details, including the registration number(s).	BPCA M15/2066
1.1(j) - (i)	Is it a legal requirement in the state where you are established for you to possess a particular authorisation, or be a member of a particular organisation in order to provide the services specified in this procurement?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
1.1(j) - (ii)	If you responded yes to 1.1(j) - (i), please provide additional details of what is required and confirmation that you have complied with this.	
1.1(k)	Trading name(s) that will be used if successful in this procurement	AGS One
1.1(l)	Relevant classifications (state whether you fall within one of these, and if so which one) a) Voluntary Community Social Enterprise (VCSE) b) Sheltered Workshop	None

	c) Public service mutual	
1.1(m)	Are you a Small, Medium or Micro Enterprise (SME) <sup>2</sup> ?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
1.1(n)	<p>Details of Persons of Significant Control (PSC), where appropriate: <sup>3</sup></p> <ul style="list-style-type: none"> <li>- Name;</li> <li>- Date of birth;</li> <li>- Nationality;</li> <li>- Country, state or part of the UK where the PSC usually lives;</li> <li>- Service address;</li> <li>- The date he or she became a PSC in relation to the company (for existing companies the 6 April 2016 should be used);</li> <li>- Which conditions for being a PSC are met; <ul style="list-style-type: none"> <li>- Over 25% up to (and including) 50%,</li> <li>- More than 50% and less than 75%,</li> <li>- 75% or more. <sup>4</sup></li> </ul> </li> </ul> <p>(Please enter N/A if not applicable)</p>	<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 50px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 40px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 15px; margin-bottom: 5px;"></div> <p>75% or more</p>
1.1(o)	<p>Details of immediate parent company:</p> <ul style="list-style-type: none"> <li>- Full name of the immediate parent company</li> <li>- Registered office address (if applicable)</li> <li>- Registration number (if applicable)</li> <li>- Head office DUNS number (if applicable)</li> <li>- Head office VAT number (if applicable)</li> </ul> <p>(Please enter N/A if not applicable)</p>	N/A
1.1(p)	<p>Details of ultimate parent company:</p> <ul style="list-style-type: none"> <li>- Full name of the ultimate parent company</li> <li>- Registered office address (if applicable)</li> <li>- Registration number (if applicable)</li> <li>- Head office DUNS number (if applicable)</li> <li>- Head office VAT number (if applicable)</li> </ul> <p>(Please enter N/A if not applicable)</p>	N/A

Please note: A criminal record check for relevant convictions may be undertaken for the preferred suppliers and the persons of significant in control of them.

Please provide the following information about your approach to this procurement:

Section 1	Bidding model
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<sup>2</sup> See EU definition of SME [https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition\\_en](https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en)

<sup>3</sup> UK companies, Societates European (SEs) and limited liability partnerships (LLPs) will be required to identify and record the people who own or control their company. Companies, SEs and LLPs will need to keep a PSC register, and must file the PSC information with the central public register at Companies House. [See PSC guidance.](#)

<sup>4</sup> Central Government contracting authorities should use this information to have the PSC information for the preferred supplier checked before award.

Question number	Question	Response
1.2(a) - (i)	Are you bidding as the lead contact for a group of economic operators?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please provide details listed in questions 1.2(a) (ii), (a) (iii) and to 1.2(b) (i), (b) (ii), 1.3, Section 2 and 3. If no, and you are a supporting bidder please provide the name of your group at 1.2(a) (ii) for reference purposes, and complete 1.3, Section 2 and 3.
1.2(a) - (ii)	Name of group of economic operators (if applicable)	N/A
1.2(a) - (iii)	Proposed legal structure if the group of economic operators intends to form a named single legal entity prior to signing a contract, if awarded. If you do not propose to form a single legal entity, please explain the legal structure.	
1.2(b) - (i)	Are you or, if applicable, the group of economic operators proposing to use sub-contractors?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
1.2(b) - (ii)	If you responded yes to 1.2(b)-(i) please provide additional details for each sub-contractor in the following table: we may ask them to complete this form as well.	
	Name	
	Registered address	
	Trading status	
	Company registration number	
	Head Office DUNS number (if applicable)	
	Registered VAT number	
	Type of organisation	
	SME (Yes/No)	
	The role each sub-contractor will take in providing the works and /or supplies e.g. key deliverables	
	The approximate % of contractual obligations assigned to each sub-contractor	

### Contact details and declaration

I declare that to the best of my knowledge the answers submitted and information contained in this document are correct and accurate.

I declare that, upon request and without delay I will provide the certificates or documentary evidence referred to in this document.

I understand that the information will be used in the selection process to assess my organisation's suitability to be invited to participate further in this procurement.

I understand that the Authorities may reject this submission in its entirety if there is a failure to answer all the relevant questions fully, or if false/misleading information or content is provided in any section.

I am aware of the consequences of serious misrepresentation.

Section 1	Contact details and declaration	
Question number	Question	Response
1.3(a)	Contact name	[REDACTED]
1.3(b)	Name of organisation	AGS One
1.3(c)	Role in organisation	Project Manager
1.3(d)	Phone number	[REDACTED]
1.3(e)	E-mail address	[REDACTED]@agsone.co.uk
1.3(f)	Postal address	Unit D, Prospect House, Hyde business Park, Brighton, BN2 4JE
1.3(g)	Signature (electronic is acceptable)	[REDACTED]
1.3(h)	Date	11/08/2022

## Part 2: Exclusion Grounds

Please answer the following questions in full. Note that every organisation that is being relied on to meet the selection must complete and submit the Part 1 and Part 2 self-declaration.

Section 2		Grounds for mandatory exclusion
Question number	Question	Response
2.1(a)	<p><b>Regulations 57(1) and (2)</b> The detailed grounds for mandatory exclusion of an organisation are set out on this <a href="#">webpage</a>, which should be referred to before completing these questions.</p> <p>Please indicate if, within the past five years you, your organisation or any other person who has powers of representation, decision or control in the organisation been convicted anywhere in the world of any of the offences within the summary below and listed on the <a href="#">webpage</a>.</p>	
	Participation in a criminal organisation.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes please provide details at 2.1(b)
	Corruption.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes please provide details at 2.1(b)
	Fraud.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes please provide details at 2.1(b)
	Terrorist offences or offences linked to terrorist activities	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes please provide details at 2.1(b)
	Money laundering or terrorist financing	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes please provide details at 2.1(b)
	Child labour and other forms of trafficking in human beings	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes please provide details at 2.1(b)
2.1(b)	<p>If you have answered yes to question 2.1(a), please provide further details.</p> <p>Date of conviction, specify which of the grounds listed the conviction was for, and the reasons for conviction,</p> <p>Identity of who has been convicted</p> <p>If the relevant documentation is available electronically please provide the web address, issuing Authorities, precise reference of the documents.</p>	
2.2	If you have answered Yes to any of the points above have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning)	Yes <input type="checkbox"/> No <input type="checkbox"/>
2.3(a)	<p><b>Regulation 57(3)</b> Has it been established, for your organisation by a judicial or administrative</p>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

	decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions?	
2.3(b)	If you have answered yes to question 2.3(a), please provide further details. Please also confirm you have paid, or have entered into a binding arrangement with a view to paying, the outstanding sum including where applicable any accrued interest and/or fines.	

Please Note: The Authorities reserves the right to use its discretion to exclude a potential supplier where it can demonstrate by any appropriate means that the potential supplier is in breach of its obligations relating to the non-payment of taxes or social security contributions.

<b>Section 3</b>		<b>Grounds for discretionary exclusion</b>	
	Question	Response	
3.1	<p><b>Regulation 57 (8)</b></p> <p>The detailed grounds for discretionary exclusion of an organisation are set out on this <a href="#">webpage</a>, which should be referred to before completing these questions.</p> <p>Please indicate if, within the past three years, anywhere in the world any of the following situations have applied to you, your organisation or any other person who has powers of representation, decision or control in the organisation.</p>		
3.1(a)	Breach of environmental obligations?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2	
3.1 (b)	Breach of social obligations?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2	
3.1 (c)	Breach of labour law obligations?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2	
3.1(d)	Bankrupt or is the subject of insolvency or winding-up proceedings, where the organisation's assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2	
3.1(e)	Guilty of grave professional misconduct?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2	

3.1(f)	Entered into agreements with other economic operators aimed at distorting competition?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(g)	Aware of any conflict of interest within the meaning of regulation 24 due to the participation in the procurement procedure?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(h)	Been involved in the preparation of the procurement procedure?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(i)	Shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes please provide details at 3.2
3.1(j)	Please answer the following statements	
3.1(j) - (i)	The organisation is guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes please provide details at 3.2
3.1(j) - (ii)	The organisation has withheld such information.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes please provide details at 3.2
3.1(j) –(iii)	The organisation is not able to submit supporting documents required under regulation 59 of the Public Contracts Regulations 2015.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes please provide details at 3.2
3.1(j)-(iv)	The organisation has influenced the decision-making process of the contracting Authorities to obtain confidential information that may confer upon the organisation undue advantages in the procurement procedure, or to negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If Yes please provide details at 3.2
3.2	If you have answered Yes to any of the above, explain what measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion? (Self Cleaning)	



## Part 3: Selection Questions<sup>5</sup>

Section 4	Economic and Financial Standing	
	Question	Response
4.1	Are you able to provide a copy of your audited accounts for the last two years, if requested? If no, can you provide <b>one</b> of the following: answer with Y/N in the relevant box.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
	(a) A statement of the turnover, Profit and Loss Account/Income Statement, Balance Sheet/Statement of Financial Position and Statement of Cash Flow for the most recent year of trading for this organisation.	Yes <input type="checkbox"/> No <input type="checkbox"/>
	(b) A statement of the cash flow forecast for the current year and a bank letter outlining the current cash and credit position.	Yes <input type="checkbox"/> No <input type="checkbox"/>
	(c) Alternative means of demonstrating financial status if any of the above are not available (e.g. forecast of turnover for the current year and a statement of funding provided by the owners and/or the bank, charity accruals accounts or an alternative means of demonstrating financial status).	Yes <input type="checkbox"/> No <input type="checkbox"/>
4.2	Where we have specified a minimum level of economic and financial standing and/ or a minimum financial threshold within the evaluation criteria for this procurement, please self-certify by answering 'Yes' or 'No' that you meet the requirements set out.  Minimum Turnover £174,000	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Section 5	If you have indicated in the Selection Questionnaire question 1.2 that you are part of a wider group, please provide further details below:	
Name of organisation	N/A	
Relationship to the Supplier completing these questions		

5.1	Are you able to provide parent company accounts if requested to at a later stage?	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.2	If yes, would the parent company be willing to provide a guarantee if necessary?	Yes <input type="checkbox"/> No <input type="checkbox"/>
5.3	If no, would you be able to obtain a guarantee elsewhere (e.g. from a bank)?	Yes <input type="checkbox"/> No <input type="checkbox"/>

Section 6	Technical and Professional Ability
<b>6.1</b>	<p><b>Relevant experience and contract examples</b></p> <p>Please provide details of up to three contracts, in any combination from either the public or private sector; voluntary, charity or social enterprise (VCSE) that are relevant to our requirement. VCSEs may include samples of grant-funded work. Contracts for supplies or services should have been performed during the past three years. Works contracts may be from the past five years.</p> <p>The named contact provided should be able to provide written evidence to confirm the accuracy of the information provided below.</p> <p>Consortia bids should provide relevant examples of where the consortium has delivered similar requirements. If this is not possible (e.g. the consortium is newly formed or a Special Purpose Vehicle is to be created for this contract) then three separate examples should be provided between the principal member(s) of the proposed consortium or Special Purpose Vehicle (three examples are not required from each member).</p> <p>Where the Supplier is a Special Purpose Vehicle, or a managing agent not intending to be the main provider of the supplies or services, the information requested should be provided in respect of the main intended provider(s) or sub-contractor(s) who will deliver the contract.</p> <p>If you cannot provide examples see question 6.3</p>

	Contract 1	Contract 2	Contract 3
<b>Name of customer organisation</b>	Arun District Council	Sutton Housing Partnership	Lanes Group – Rail Division partnership
<b>Point of contact in the organisation</b>	[REDACTED]	[REDACTED]	[REDACTED]
<b>Position in the organisation</b>	Principal Environmental Health Officer	Performance and Data Analyst	Commercial Director
<b>E-mail address</b>	[REDACTED]	[REDACTED]	[REDACTED]
<b>Description of contract</b>	Working directly for the Council, with Environmental Inspectors, Food Safety Officers & Housing Team Officers, as well as individual residents and businesses. In addition we have taken on 15 businesses that had contracts with the Council. The Arun	[REDACTED] AGS provides services to support SHP repair and maintenance teams to deliver pest control services to SHP residents. This is mainly a reactive response contract whereby we have to	Tfl London Underground, throughout 270 stations, 14 depots, 18 operational facilities/ offices, rental accommodation, and approx. 1400 other individual premises.  Services provided to LU; • Pigeon & bird

	<p>district has an area of approximately 85 square miles situated in West Sussex from the Hampshire to Brighton.</p> <p>The general services provided are listed below, but we also provide additional ad hoc services such as fox and seagull controls as and when requested.</p> <ul style="list-style-type: none"> <li>• Rats</li> <li>• Mice</li> <li>• Wasps nests</li> <li>• Cockroaches</li> <li>• Fleas &amp; clothes moths</li> <li>• Bedbugs</li> <li>• Squirrels</li> <li>• Cluster flies</li> <li>• Identification of pests on request</li> <li>• Clearance service for filthy &amp; verminous premises</li> <li>• Scheduled maintenance &amp; inspections</li> <li>• Reactive callouts</li> </ul>	<p>attend site within 2 or 4 hours for emergency works. Sutton Housing Partnership was set up in 2006 to manage council housing stock on behalf of Sutton Council and provide day-to-day housing management services to Sutton Council tenants and leaseholders. This covers all those that may be housed by the council and includes elderly, vulnerable, disabled, ethnic minorities, etc. We fully abide by the SHP Code of Governance to make sure that all residents are treated equally and fairly with a high quality service taking into account each residents differing circumstances.</p> <p>Main services provided are;</p> <ul style="list-style-type: none"> <li>• Rats</li> <li>• Mice</li> <li>• Wasps nests</li> <li>• Cockroaches</li> <li>• Fleas &amp; clothes moths</li> <li>• Bedbugs</li> <li>• Squirrels</li> <li>Cluster flies</li> </ul>	<p>culling, by hawks and shooting.</p> <ul style="list-style-type: none"> <li>• Pigeon deterrents</li> <li>• Rodent eradication</li> <li>• Insect, flea &amp; spider eradication</li> <li>• Wasp &amp; nests removal</li> <li>• Mammal eradication</li> <li>• Bed bug treatments</li> <li>• Scheduled maintenance &amp; inspections</li> </ul> <p>Reactive callouts</p>
<b>Contract Start date</b>	May 2020	Jan 2021	July 2017
<b>Contract completion date</b>	May 2023	May 2024	June 2024
<b>Estimated contract value</b>	£75k pa	£60k pa	£650k per annum + ad hoc spend of approximately £200k

6.2	<p>Where you intend to sub-contract a proportion of the contract, please demonstrate how you have previously maintained healthy supply chains with your sub-contractor(s)</p> <p>Evidence should include, but is not limited to, details of your supply chain management tracking systems to ensure performance of the contract and including prompt payment or membership of the UK Prompt Payment Code (or equivalent schemes in other countries)</p>
	<p>AGS do not intend to use agency or subcontract workers to fulfil this contract , but as a business we do use them on other contracts and the following is applicable to them and our supply chain;</p> <p>All suppliers must comply with our QUA0016 Supplier Evaluation &amp; Approval HSQE procedure, they will be given a questionnaire to complete and an initial inspection audit carried out. As part of that questionnaire subcontractors are asked for their credentials, accreditations such as ISO accreditations, RISQS, FORS, and specific competences. They must also review and agree our company policies, ethical procurement, equality and payment of Living Wages as previously mentioned, or have their own in place. To maintain standards throughout the contract, AGS will work with its suppliers to ensure that our initiatives and stay safe values are adopted by the supply chain. Throughout the year AGS will hold regular meetings and forums to co-ordinate, communicate and consult on performance, safety and any competency issues with key suppliers. Both AGS and supplier staff will attend these meetings, getting to know each other and pooling their experience and knowledge to provide the best and most efficient service possible.</p> <p>Suppliers will be continuously inspected, monitored and reviewed by HSQE and AGS Managers to ensure they deliver the quality of service and working practices to a high standard as set down in their Service Level Agreement and contract. Suppliers will be managed consistently with AGS staff and receive the regular site briefings, alerts, toolbox talks' and training where required.</p>

6.3	<p>If you cannot provide at least one example for questions 6.1, in no more than 500 words please provide an explanation for this e.g. your organisation is a new start-up or you have provided services in the past but not under a contract.</p>

<b>Section 7</b>	<b>Modern Slavery Act 2015: Requirements under Modern Slavery Act 2015</b>
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7.1	Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")?	Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/>
7.2	If you have answered yes to question 7.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015?	Yes <input type="checkbox"/> Please provide the relevant url ...  No <input type="checkbox"/> Please provide an explanation

## 8. Additional Questions

Suppliers who self-certify that they meet the requirements to these additional questions will be required to provide evidence of this if they are successful at contract award stage.

<b>Section 8</b>	<b>Additional Questions</b>
<b>8.1</b>	<b>Insurance</b>
a.	<p>Please self-certify whether you already have, or can commit to obtain, prior to the commencement of the contract, the levels of insurance cover indicated below:  Y – already have cover of £25m</p> <p>Employer’s (Compulsory) Liability Insurance = £5M minimum</p> <p>Public Liability Insurance = £5M minimum</p>

<b>8.2</b>	<b>General Data Protection Regulation (GDPR)</b>	
a.	<p>Please confirm that you have in place, or that you will have in place by contract award, the human and technical resources to perform the contract to ensure compliance with the GDPR and to ensure the protection of the rights of data subjects.</p>	<p>Delete as appropriate</p> <p>Yes</p>
b.	<p>Please provide details of the technical and organisational measures (including systems and processes) you have in place, or will have in place by contract award, to ensure compliance with the General Data Protection Regulation and to ensure the protection of the rights of data subjects.</p> <p>Your response should include information on the following:</p> <ul style="list-style-type: none"> <li>○ ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services.</li> <li>○ the pseudonymisation and encryption of personal data.</li> <li>○ restoring the availability and access to personal data in a timely manner in the event of a physical or technical incident.</li> <li>○ ensuring legal safeguards are in place to lawfully transfer personal data outside the EU (if such transfers will take place and are authorised by the data controller);</li> <li>○ does your organisation have a Data Protection Officer?</li> <li>○ maintaining records of personal data processing activities (GDPR Article 30);</li> <li>○ Staff training (Data Protection &amp; Cyber Security): and</li> <li>○ regularly testing, assessing and evaluating the effectiveness of the above measures.</li> </ul>	
c.	<p>Please provide any further information you would like us to know about your data protection compliance as a Data Processor.</p>	

The Board of Directors and management of AGS, are within the context of AGS' Information Security Policy, committed to compliance with all relevant UK and EU laws in respect of personal data, and to protecting the "rights and freedoms" of individuals whose information AGS collects in accordance with the General Data Protection Regulation (GDPR). The Board of Directors has developed, implemented, maintains and continuously improves a documented Integrated Management System (IMS) which helps manage personal information.

AGS complies with the GDPR legislation as a data controller and/or data processor and has an appointed GDPR Compliance Officer, with policies in place that all employees are subject to. AGS ICO notification is renewed annually. AGS equipment is audited as compliant under our Cyber Essentials Accreditation IASME-CE-016086

AGS Board and Managers, under AGS Information Security Policy, are committed to compliance with relevant laws in respect of personal data, and to protect the "rights and freedoms" of those whose information AGS collects.

The Data Protection Officer, [REDACTED], AGS Finance Director, is responsible for reviewing the details of notification, in the light of any changes to AGS activities and to any additional requirements identified by means of impact assessments. The DPO reviews personal data maintained by AGS, identifies any no longer required in the context of the registered purpose and will arrange to have that data securely destroyed.

The Data Protection Officer is accountable to the Board of Directors of AGS for the management of personal information within AGS and for ensuring that compliance with data protection legislation and good practice can be demonstrated. This accountability includes:

- Development and implementation of the IMS as required by AGS Date Protection Policy
- Security and risk management in relation to compliance with the policy.

The Data Protection Officer who the Board of Directors considers to be suitably qualified and experienced, has been appointed to take responsibility for AGS' compliance with this policy on a day-to-day basis and, in particular, has direct responsibility for ensuring that AGS complies with the GDPR, as do the Senior Manager Team and Board of Directors in respect of data processing that takes place within their area of responsibility.

The Data Protection Officer has specific responsibilities in respect of procedures such as the Subject Access Request Procedure and are the first point of call for staff seeking clarification on any aspect of data protection compliance.

Compliance with data protection legislation is the responsibility of all members of AGS who process personal information.

AGS' Training and Certification Policy sets out specific training and awareness requirements in relation to specific roles with regards to GDPR and to members of AGS generally.

Members of AGS are responsible for ensuring that any personal data supplied by them, and that is about them, to AGS is accurate and up-to-date.

Personal data can only be collected for specified, explicit and legitimate purposes and must be adequate, relevant and limited to what is necessary. All processing of personal data must

be done in accordance with the following data protection principles of the Regulation, and AGS' policies and procedures are designed to ensure compliance with them:-

- Personal data must be processed lawfully, fairly and transparently.

AGS has a Fair Processing Procedure.

The GDPR introduces the requirement for transparency whereby the controller has transparent and easily accessible policies relating to the processing of personal data and the exercise of individuals' "rights and freedoms". Information must be communicated to the data subject in an intelligible form using clear and plain language.

Data obtained for specified purposes must not be used for a purpose that differs from those formally notified to the Information Commissioner as part of AGS' GDPR registration:-

- Personal data must be adequate, relevant and limited to what is necessary for processing.

The Data Protection Officer is responsible for ensuring that information, which is not strictly necessary for the purpose for which it is obtained, is not collected.

The Data Protection Officer is responsible for ensuring that appropriate additional steps are taken to keep personal data accurate and up to date, taking into account the volume of data collected, the speed with which it might change and any other relevant factors.

On at least an annual basis, the Data Protection Officer will review all the personal data maintained by AGS, by reference to the Data Inventory Register, and will identify any data that is no longer required in the context of the registered purpose and will arrange to have that data securely deleted/destroyed.

Personal data shall not be transferred to a country or territory outside the European Union unless that country or territory ensures an adequate level of protection for the 'rights and freedoms' of data subjects in relation to the processing of personal data.

The transfer of personal data outside of the EU is prohibited unless one or more of the specified safeguards or exceptions apply.

We do not envisage any special requirements regarding GDPR in respect of this contract. If any personal information is utilized in the delivery of this contract it will be secure and anonymized to protect the identity of those involved.

For full details of AGS GDPR policies please refer to GDP0002 Data Protection Policy, plus the following applicable GDPR/ Security documents, available on request;

Document Number	Document Title
GDP0001	Anonymisation Pseudonymisation and Encryption Policy
GDP0002	Data Protection Policy
GDP0003	Fair Processing Procedure - Data Protection
GDP0004	Data Breach Notification Procedure
GDP0005	Subject Access Request Form
GDP0006	Data Protection Officers Responsibilities
GDP0007	Photo-Video Consent Form
GDP0008	Company Communication Procedure
GDP0009	Staff Communication Policy
GDP0010	IT Access Control Rules and Rights
GDP0011	External Parties - Information Security Procedure
GDP0012	IT Service and Security Incident Management Process



GDP0013	Collection of Evidence Procedure - Data Protection Investigations
GDP0014	CCTV Policy
GDP0015	Register of requests for disclosure and access to CCTV images
GDP0016	CCTV Assessment Checklist for New Camera Installations and Alterations
GDP0017	Guidance Information on Locations of AGS CCTV Cameras
GDP0018	Data Privacy Impact Assessment - Guidances Notes
GDP0019	Skyhigh - Data Breach Incident Response Checklist
GDP0020	ICO Guidance on Data Security Breach Management
GDP0021	NCSC 10 Steps to Cyber Security
GDP0022	Information Security Policy
GDP0023	Data Access Control, Classification & Handling Policy
GDP0024	End User Acceptable IT Use Policy & Guidance
GDP0025	Data Backup & Restore Policy
GDP0026	Data Transfer Policy
GDP0027	Anti-Virus Guidelines
GDP0028	Anti-Virus Policy
GDP0029	Implementing a Vulnerability Management Process SANS Guidance
GDP0030	IT Vulnerability Management Policy
GDP0031	Encryption Policy
GDP0032	Disposal of Personal Data Policy
GDP0033	Records Disposal Form
GDP0034	Clear Desk Policy
GDP0035	Home and Mobile-Site Working Guidance
GDP0036	IT User Access Policy
GDP0037	Data Sharing Checklists
GDP0038	Data Sharing Log
GDP0039	ICO Data Sharing Code of Practice
GDP0040	Transporting Files - How to do it Safely Guidance Notes
GDP0041	Laptop & Removable Media Policy
GDP0042	Warning CCTV In Operation Sign
GDP0043	Bring Your Own Device Policy
GDP0044	Information Security Incident Management Policy
GDP0045	Data Controller Log
GDP0046	Data Processor Log
GDP0047	Surveillance Camera Code of Practice
GDP0048	CCTV Small Business Guidance
GDP0049	Home Office UK Police Requirements
GDP0050	Staff Data Privacy Policy
GDP0051	Data Mapping & Privacy Impact assessment template

## SECTION 2 – QUALITY/TECHNICAL QUESTIONS

### 2.1 HEADLINE QUESTIONS

2.1.1 Please note that these questions are pass/fail (a YES will be a pass, a NO will be a fail)

<p><b>SPECIFICATION REQUIREMENTS</b></p> <p>Please confirm you are you able to provide pest control services in accordance with the requirements of the attached specification</p>	<p>YES ✓ NO <input type="checkbox"/></p>
<p><b>MEMBERSHIP OF PROFESSIONAL BODY</b></p> <p>Please confirm you are a member of a recognised professional body in relation to pest control, e.g. BPCA. Please provide details.</p>	<p>YES ✓ NO <input type="checkbox"/></p>
<p><b>QUALIFICATIONS</b></p> <p>Please confirm that all staff who will provide the service set out in the Specification have a minimum of Level 2 BPOC/RSPH Certificate in Pest Control or similar? Please provide details</p>	<p>YES ✓ NO <input type="checkbox"/></p>

### 2.2 WEIGHTED QUESTIONS

2.2.1 Please indicate where responses are set out as a separate document or an attachment

2.2.2 Each question is weighted as follows:

Q1 – 10%    Q2 – 10%    Q3 – 6%    Q4 – 2%    Q5 – 8%    Q6 – 4%

QUESTION
<p><b>Q1. <u>Best practice and awareness</u></b></p> <p>Please outline the methods you shall use to ensure you are meeting best practice within industry standards, this should include: -</p> <ul style="list-style-type: none"> <li>• Details of your Professional Membership, Quality Assurance system and health and safety arrangements</li> </ul>

- How will you ensure your service is competitive and accessible to all sectors of the community?

**Q1 RESPONSE**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

Word count maximum 1000 words

**Q2. Operational**

These contracts are for 3 individual councils. How do you propose to mobilise and maintain service standards for these contracts? Please give examples of previous experience gained from similar work.

**Q2 RESPONSE**

[Redacted]

[Redacted]

[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Word count maximum 1000 words

**Q3. Added Value**

Please detail how you will bring added value to these contracts. i.e

- What measures will be implemented to reduce or mitigate the carbon emissions derived from service provision?
- How will your company benefit the local environment and work to be as green as possible throughout operations?
- What available technology would you use to facilitate this contract, particularly concerning customer satisfaction?

**Q3 RESPONSE**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Word count maximum 1000 words

**Q4. Innovation**

Has your organisation been independently audited and certified to be in conformance with an industry standard such as the International Organisation for Standardisation (ISO)? If so, please provide details.

**Q4 RESPONSE**

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[REDACTED]

[Redacted]

[Redacted]

Word count maximum 500 words per area

**Q5. Complaints procedure**

Please provide details of your public complaints structure and escalation procedures and provide details of how you ensure sufficient relevant experience in the staff you employ for this work

**Q5 RESPONSE**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Word count maximum 1000 words

**Q6. Business Continuity**

With regard to potential problems through staff sickness, equipment failure, severe weather etc how will you ensure you can maintain a high-quality service with minimal disruption

**Q6 RESPONSE**

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Word count maximum 500 words

**SECTION 3 – PRICING SCHEDULE**

**Please complete Column C (Price) only on each of the three tabs (Dover, Folkestone & Hythe and Thanet) of the Pricing Schedule at APPENDIX B and enter the total sum from the Summary Sheet (Cell C8) in the table below which will be used for evaluation purposes only.**

**Please return the completed APPENDIX B - Pricing Schedule as part of your submission.**

Please note when completing pricing schedules, Members across the three authorities have placed significant importance on maintaining reduced fees for rats, mice and bedbug treatments for residents to remain as affordable as possible to reduce any potential outbreak, whilst accepting that other treatments may be weighted accordingly to balance the costs. This can be seen on the Local Authorities websites to assist with competitive pricing in these areas.

See following links for current prices within the respective districts:

<https://www.dover.gov.uk/Environment/Environmental-Protection/Pest-Control/Home.aspx>

<https://www.folkestone-hythe.gov.uk/environmental-protection/pollution/pest-problems>

<https://www.thanet.gov.uk/info-pages/pest-control-services/>

\*All costs should be exclusive of VAT

<b>Total</b>	<b>£320,880.00</b>
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## SECTION 4 – FORM OF TENDER

TO: DOVER DISTRICT COUNCIL

PROVISION OF: Pest Control Services

REFERENCE: DN627425

We James Waller the undersigned, having examined the Invitation to Tender (ITT) and all other relevant schedules ("the ITT Documents"), do hereby offer to provide the services to the Council's as specified in the ITT Documents and in accordance with the attached additional documentation, commencing and continuing for the period specified in the ITT Documents (including any option to extend).

If this offer is accepted, we will execute such documents as maybe appropriate in order to create a binding contract between the Council's and ourselves.

We agree that before executing the Contract's (and associated schedules) substantially in the form set out in the ITT Documents, the formal acceptance of this Tender in writing by the Council or such parts as may be specified, together with the contract documents shall be required as a condition precedent to the entering into of the Contract's.

We further agree with the Council in legally binding terms to comply with the provisions of confidentiality set out in paragraph 1.3.10 of the **INVITATION TO TENDER INSTRUCTION DOCUMENT**.

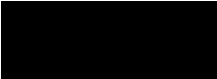

We understand the Councils are not bound to accept the lowest of any Tender received, nor assign a reason for the rejection of any Tender. We accept that any costs incurred in Tender preparation are for our own account.

We further undertake and it shall be a condition of any Contracts, that:

The amount of our Tender has not been calculated by agreement or arrangement with any person other than the Councils and that the amount of our Tender has not been communicated to any person until after the closing date for the submission of Tender and in any event not without the written consent of the Councils.

We have not canvassed and will not before the evaluation process canvass or solicit any member or officer, employee or agent of the Council or other contracting Authorities in connection with the award of the Contracts and undertake that no person employed by us has done or will do any such act.

I warrant that I have all requisite Authorities to sign this Tender and confirm that I have complied with all the requirements of the ITT.

Signature:	
Name & status:	 , Managing Director
Dated:	02/09/2022
For and on behalf of:	AGS One

## SECTION 4 – FORM OF TENDER

TO: DISTRICT COUNCIL OF FOLKESTONE & HYTHE

PROVISION OF: Pest Control Services



REFERENCE: DN627425

We James Waller the undersigned, having examined the Invitation to Tender (ITT) and all other relevant schedules ("the ITT Documents"), do hereby offer to provide the services to the Council's as specified in the ITT Documents and in accordance with the attached additional documentation, commencing and continuing for the period specified in the ITT Documents (including any option to extend).

If this offer is accepted, we will execute such documents as maybe appropriate in order to create a binding contract between the Council's and ourselves.

We agree that before executing the Contract's (and associated schedules) substantially in the form set out in the ITT Documents, the formal acceptance of this Tender in writing by the Council or such parts as may be specified, together with the contract documents shall be required as a condition precedent to the entering into of the Contract's.

We further agree with the Council in legally binding terms to comply with the provisions of confidentiality set out in paragraph 1.3.10 of the **INVITATION TO TENDER INSTRUCTION DOCUMENT**.



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We have not canvassed and will not before the evaluation process canvass or solicit any member or officer, employee or agent of the Council or other contracting Authorities in connection with the award of the Contracts and undertake that no person employed by us has done or will do any such act.

I warrant that I have all requisite Authorities to sign this Tender and confirm that I have complied with all the requirements of the ITT.

Signature:	
Name & status:	 , Managing Director
Dated:	02/09/2022
For and on behalf of:	AGS One

## SECTION 4 – FORM OF TENDER

TO: THANET DISTRICT COUNCIL

PROVISION OF: Pest Control Services

REFERENCE: DN627425

We James Waller the undersigned, having examined the Invitation to Tender (ITT) and all other relevant schedules (“the ITT Documents”), do hereby offer to provide the services to the Council’s as specified in the ITT Documents and in accordance with the attached additional documentation, commencing and continuing for the period specified in the ITT Documents (including any option to extend).

If this offer is accepted, we will execute such documents as maybe appropriate in order to create a binding contract between the Council’s and ourselves.

We agree that before executing the Contract’s (and associated schedules) substantially in the form set out in the ITT Documents, the formal acceptance of this Tender in writing by the Council or such parts as may be specified, together with the contract documents shall be required as a condition precedent to the entering into of the Contract’s.

We further agree with the Council in legally binding terms to comply with the provisions of confidentiality set out in paragraph 1.3.10 of the **INVITATION TO TENDER INSTRUCTION DOCUMENT**.



We understand the Councils are not bound to accept the lowest of any Tender received, nor assign a reason for the rejection of any Tender. We accept that any costs incurred in Tender preparation are for our own account.

We further undertake and it shall be a condition of any Contracts, that:

The amount of our Tender has not been calculated by agreement or arrangement with any person other than the Councils and that the amount of our Tender has not been communicated to any person until after the closing date for the submission of Tender and in any event not without the written consent of the Councils.

We have not canvassed and will not before the evaluation process canvass or solicit any member or officer, employee or agent of the Council or other contracting Authorities in connection with the award of the Contracts and undertake that no person employed by us has done or will do any such act.

I warrant that I have all requisite Authorities to sign this Tender and confirm that I have complied with all the requirements of the ITT.

Signature:	
Name & status:	 Managing Director
Dated:	02/09/2022
For and on behalf of:	AGS One

## SECTION 5 – PARENT COMPANY GUARANTEE – AS APPLICABLE

EXAMPLE – WILL ONLY NEED TO BE COMPLETED BY THE SUCCESSFUL SUPPLIER PRIOR TO AWARD IF REQUESTED

THIS DEED is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

BETWEEN

- (1) [GUARANTOR] (Company Registration No. [ ] ) whose registered office is at [ -Guarantor's address- ] ("the Guarantor")

AND

- (2) Dover District Council, White Cliffs Business Park, Dover, Kent CT16 3PJ ("the Council")

WHEREAS

- A. This Deed is supplemental to a contract ("the Contract") dated [ ] made between the Council of the one part and [name of Contractor] ("the Contractor") of the other part whereby the Contractor has agreed to provide [ -type of works- ] ("the Works") upon the terms and conditions more particularly described therein.
- B. The Guarantor has control over the Contractor, within the meaning of section 1124 of the Corporation Tax Act 2010.
- C. The Guarantor has agreed to guarantee the due performance of the Contract.

NOW THE GUARANTOR HEREBY COVENANTS with the Council as follows:

1. The Guarantor unconditionally and irrevocably guarantees to the Council that if any sums are due and owing to the Council by the Contractor pursuant to the terms of the Contract and there is any default in any payment of such sums the Guarantor shall forthwith on first demand by the Council unconditionally pay such sums to the Council in full together with all costs and expenses which the Council may incur in enforcing this Guarantee.
2. The Guarantor unconditionally and irrevocably undertakes fully and promptly to indemnify the Council against all damages, costs, claims, losses, demands, liabilities and expenses that may be suffered or incurred by the Council by reason of any default on the part of the Contractor in performing and observing the terms and conditions of the Contract and in particular such costs and expenses as may be incurred as a result of a third party providing all or any part of the Works (as defined in the Contract) by reason of a failure by the Contractor to provide the Works in accordance with the terms of the Contract.
3. Upon being required to do so by the Council by notice in writing, the Guarantor shall at its own expense perform or take whatever steps may be necessary to procure the performance of the Contractor's obligations under the Contract and shall from the date of such notice assume jointly and severally with the Contractor all the rights and obligations of the Contract in every way as if the Guarantor were a party thereto, and the performance of the Contract shall continue as if the Guarantor and the Council had been the original parties to the Contract;
4. The Guarantor shall not be discharged or released from this Guarantee nor shall its liability under this Guarantee be affected or impaired:
  - (i) by any agreement, conduct or forbearance between or afforded to the Contractor by the Council;
  - (ii) by reason of any alteration in the obligations undertaken by the Contractor;
  - (iii) by any forbearance whether as to payment, time, performance or otherwise; or
  - (iv) as a result of any change in the constitution of the Guarantor, the Contractor or the Council.
5. The Council shall not be obliged to require payment from the Contractor before enforcing the terms of this Guarantee and the Guarantor shall be treated in all respects as being jointly and

severally liable with the Contractor for all liabilities obligations and undertakings of the Contractor as provided in the Contract.

6. This Guarantee shall remain in full force and effect until the expiry of the Contract and until all the obligations of the Contractor under the Contract have been satisfied in full and this Guarantee is in addition to and not in substitution for any other guarantee, undertaking, indemnity, security or other obligation given or owing to the Council in respect of sums due or liabilities arising pursuant to the terms of the Contract.
7. If any monies shall become payable under or in respect of this Guarantee then, so long as any monies due and owing by the Contractor to the Council under the terms of the Contract remain unpaid, Guarantor shall not:
  - (i) in respect of the amounts paid by the Guarantor under this Guarantee seek to enforce repayment by subrogation or otherwise;
  - (ii) in the event of the insolvency, winding up, liquidation or dissolution of the Contractor prove in competition with the Council in respect of any monies owing to the Guarantor by the Contractor on any account whatsoever but will give to the Council the benefit of any such proof and all monies to be so received in respect thereof.
8. All demands made by the Council under this Guarantee shall be made in writing and sent to the Guarantor at the address set out above or such other address as may be notified in writing by the Guarantor to the Council. Such demands shall be deemed to have been received by the Guarantor on the next working day after the date of transmission, whether by post or facsimile transmission.
9. No failure to exercise or delay in exercising any right, power or privilege hereunder on the part of the Council shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or exercise of any other right, power or privilege. The rights and remedies provided herein are cumulative and exclusive of any rights or remedies provided by the law.
10. The Guarantor hereby warrants and represents to the Council that it has full power and Authorities to enter into and perform its obligations under this Guarantee.
11. The Guarantor shall procure that, during the term of this guarantee, there shall be no change of control of the Contractor. "Control" shall bear the meaning given in section 1124 of the Corporation Tax Act 2010.
12. This Guarantee shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

IN WITNESS whereof the Guarantor has executed this Guarantee as a deed the day and year first before-written

EXECUTED BY [GUARANTOR]

acting by two directors or by one director and the company secretary

<b>Director</b>	<b>Signature:</b>
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	<b>Name IN CAPITALS:</b>
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<b>Director / Company Secretary</b>	<b>Signature:</b>
	<b>Name IN CAPITALS:</b>

## SECTION 6 – TUPE CONFIDENTIALITY LETTER

Date: 02/09/2022

Tenderer Name: AGS One

Address: Unit D, Prospect House, Hyde Business Park, Brighton, BN2 4JE

Dear Sirs,

**CONTRACT REFERENCE:** Pest Control Services

Letter regarding TUPE personal and commercially sensitive information – Confidential

In consideration of our disclosure to you of the TUPE information in relation to our incumbent contractor, you undertake to ensure that you comply with and assist the Council with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data. This includes without limitation, (i) the Data Protection Act 2018, until the effective date of its repeal (ii) the General Data Protection Regulation (EU 2016/679) (GDPR) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 2018 and the GDPR.

You will undertake to keep the information secure and confidential and will not communicate or otherwise make the TUPE Information available to any third party; or use it for any purpose other than preparing your tender for the provision of Environmental Services.

You must destroy said information, as confidential waste and/or permanently delete if held electronically, following notification of contract award and/or the conclusion of the procurement exercise.

This letter shall be governed by the law of England and Wales.

Please sign and date below and return a copy to me in acceptance of this letter and acceptance of personal information privacy obligations contained, then I will forward a copy of the TUPE Information to you.

Yours faithfully

Procurement Manager  
Dover District Council

Signed ... [REDACTED] ..... PRINT NAME... [REDACTED]

Authorised Signatory of the Contractor

Date.....02/09/2022

**This letter must be signed and returned via the 'Message' function within the Kent Business Portal ASAP in order for the Council to issue the TUPE information by return.**