**DATED 2024**

**GOSPORT BOROUGH COUNCIL**

**and**

**[INSERT SUCCESSFUL TENDERERS NAME]**

**CONTRACT**

**for the provision of Footfall and Visitor Behaviour Reporting**

**Services**

Legal Services

Gosport Borough Council

Town Hall, High Street,

Gosport,

Hampshire,

PO12 1EB

[Ref: xxxxx]

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PARTIES

1. GOSPORT BOROUGH council of Town Hall, High Street, Gosport, Hampshire, PO12 1EB (the “Council”); and
2. [insert name of Successful tenderer] (Registered Company Number: [Insert Number] of [Insert Registered Address] (the “Contractor”)

(each a "**Party**" and together the "**Parties**").

INTRODUCTION

The Council wishes to commission the provision of data relating to footfall in and around the Town. This information will enable the council to analyse footfall and visitor behavior to understand trends and to measure the effectiveness of events and initiatives on visitor numbers. The contract will commission supply of this data for the next 3 years.

1. On DATE the Council advertised on the South East Business Portal, inviting prospective suppliers to submit proposals for the provision of footfall and visitor behaviour data reporting
2. The Contractor is a leading provider of mobility and demographic data insights and has experience in providing footfall data and visitor profiles
3. On the basis of the Contractor's response to the advertisement and a subsequent procurement process, the Council selected the Contractor as its preferred contractor.
4. The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

SECTION 1 – PRELIMINARY

1. Definitions and interpretation
   1. In the Contract, unless the context otherwise requires, the terms set out in this Contract shall have the meanings ascribed to them in Schedule A (Definitions).
   2. In this Contract:
      1. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
      2. words importing the masculine include the feminine and the neuter;
      3. a reference to a clause, schedule, section, part or appendices is a reference to a clause, schedule, section, part or appendices within these Conditions of Contract unless expressly stated otherwise;
      4. reference 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;
      5. reference 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;
      6. a reference to writing or written excludes email;
      7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
      8. clause headings and notes are for ease of reference only and do not affect the interpretation of the Contract.
2. Commencement and Duration of Contract
   1. The Contract shall commence on the Commencement Date and unless terminated earlier in accordance with the Contract will remain in force for the Contract Period.
3. Contract Documents
   1. Where there is any conflict or inconsistency between the provisions of the Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
      1. these Conditions of Contract;
      2. Schedule B (Specification);
      3. the documents listed in Schedule E, Part 2 (Clarifications);
      4. all other schedules attached to these Conditions of Contract, except the schedule listed at clauses 3.1.3 and 3.1.5;
      5. Schedule E, Part 1 (Contractor’s Tender).

save to the extent that the standards or levels of Service set out in Schedule E, Part 1 (Contractor's Tender) exceed those set out in Schedule B (Specification); in which case such higher standards or levels of performance set out in Schedule E, Part 1 (Contractor's Tender) shall prevail (to the extend necessary to achieve the performance of such higher standards or levels of performance only).

SECTION 2 – THE SERVICE

1. Provision of the Service
   1. During the Contract Period the Contractor shall provide the Service with all reasonable skill prudence and foresight and in accordance with the provisions of the Contract, all applicable Laws, Good Industry Practice, the Quality Standard, the requirements of all Necessary Consents and all reasonable instructions of the Authorised Officer acting in good faith and in accordance with the Contract.
   2. The Contractor shall maintain accreditation with the relevant Quality Standards accreditation body throughout the Contract Period.
   3. The Contractor shall provide all the equipment necessary for the delivery of the Service. The Contractor shall maintain all items of equipment within the Premises in a safe, serviceable and clean condition.
   4. The Contractor shall not deliver any equipment nor begin any work on the Council Premises without obtaining prior approval from the Authorised Officer.
   5. The Contractor shall take appropriate steps to ensure that neither the Contractor nor any of its Representatives 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 and the duties owed to the Council under the provisions of the Contract. The Contractor will disclose to the Council full particulars of any such conflict of interest which may arise.
2. Contingencies and Inability to Perform
   1. The Contractor shall as soon as practicable notify the Authorised Officer of any circumstances which might prejudice the Contractor’s ability to perform the Service whether temporarily or permanently.
   2. Subject to clause 42 (Force Majeure) where the Contractor is unable to perform any of its obligations under this Contract then the Council may employ another contractor to provide that part of the Service and recover its additional costs (if any) reasonably and properly incurred in doing so from the Contractor.
   3. This Contract does not prevent the Council from instructing another contractor to undertake any part of the Service in particular where the Contractor is unable to respond for any reason, or the Council is entitled to suspend the Service in accordance with this Contract.
3. Payment
   1. Subject to the requirements of this clause 6, in consideration of the provision of the Service the Council shall pay to the Contractor the Contract Price.
   2. At the end of each calendar month, or as otherwise agreed between the parties, the Contractor shall submit to the Authorised Officer an invoice in respect of the work forming part of the Service that has been completed by the Contractor during the previous calendar month, in accordance with Schedule C (Contract Price Schedule). Such invoice shall include details for the respective month as set out in the Specification and shall detail the amount charged in respect of each element of the Service and clearly show the amount of VAT to be added to the total amount invoiced if the Contractor is registered for VAT purposes.
   3. Where the Contractor submits an invoice to the Council in accordance with clause 6.2 and Schedule C (Contract Price Schedule), the Council will consider and verify that invoice within seven (7) days of receipt of the invoice.
   4. Where the Contractor submits an invoice more than one month in advance of providing the Service, the due date for payment of the Contract Price shall be the end of that period in which the Service is provided.
   5. Within seven (7) days of the receipt of the invoice, the Authorised Officer shall advise the Contractor in writing of any discrepancy between the amount stated in the invoice and the amount properly due to the Contractor in accordance with this Contract, which shall take into account any adjustments made. The Council shall pay to the Contractor such amount as properly due under such invoice no later than a period of thirty (30) days from the date on which the Council has determined the correct amount to be paid under the invoice
   6. Subject to clause 7 (Disputed Sums), where the Council fails to settle an invoice in full within thirty (30) days of the date the invoice was verified by the Council in accordance with clause 6.3 and / or 6.5 (as appropriate), the Contractor shall be entitled to charge interest on any amount outstanding in accordance with clause 8 (Interest on Overdue Payments).
   7. Where the Council fails to comply with clause 6.3 the invoice shall be regarded as valid and undisputed seven (7) days after the date on which it was received by the Council.
   8. The Council shall make all payments to the Contractor via the Bankers’ Automated Clearing Service (“BACS”).
   9. Where the Contractor fails without due cause to provide verifiable records to the reasonable satisfaction of the Authorised Officer to evidence the amounts stated in the invoice then the Council shall be entitled to withhold payment until such time as such verifiable records are provided.
   10. The Council shall pay to the Contractor such VAT that may be chargeable by the Contractor in connection with the provision of the Service and the Contractor shall issue a tax invoice in respect thereof. The Contractor shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Contractor's failure to account for, or to pay, any VAT relating to payments made to the Contractor under this Contract.
   11. The Contractor shall ensure that in all contracts entered into with sub-contractors in respect of this Contract;
       1. contains the same terms with regard to payment as are set out in clause 6.3 to 6.7; and
       2. contains a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards to have the same effect as set out in clause 6.3 to 6.7.
4. Disputed Sums
   1. Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be referred to Section 10 (Dispute Resolution).
   2. Interest due on any sums in dispute shall not accrue until the earlier of 30 days after resolution of the dispute between the parties, or receipt of the decision of the adjudicator in accordance with Section 10 (Dispute Resolution).
   3. The Contractor shall not suspend the supply of the Services if any payment is overdue.
5. Interest on Overdue Payments
   1. Either party shall pay interest on all overdue undisputed sums properly invoiced under this Contract at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998 accruing on a day to day basis from the due date up to the date of actual payment whether before or after judgment.
6. Set-Off
   1. The Council may retain or set off any sums owed to it by the Contractor which have fallen due and payable against any sums due to the Contractor under this Contract or any other agreement pursuant to which the Contractor provides goods or services to the Council.
   2. If the Council wishes to set off any amount owed by the Contractor to the Council against any amount due to the Contractor pursuant to clause 9.1, it shall give notice to the Contractor within 30 days of receipt of the relevant invoice, setting out the Council's reasons for withholding or retaining the relevant charges.
   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.

SECTION 3 - REVIEW

1. Officers
   1. The Authorised Officer shall liaise with and instruct the Contractor and its Representatives regarding all matters relating to performance by the Contractor of its obligations under the Contract and shall determine any matters or issue any notices as stipulated under the Contract.
   2. The Contractor shall inform the Council on or before the Commencement Date of the details of the Contractor’s Manager, who shall be the main point of contact for the Council and shall have power on behalf of the Contractor in connection with any matter relating to performance of the Service and shall exercise the rights, functions and obligations of the Contractor under the Contract.
2. Meetings
   1. The Authorised Officer and Contractor’s Manager shall hold regular meetings (being at least quarterly, unless agreed otherwise) in accordance with this clause 11 to review the working of the Contract. Such meetings shall identify ways in which either party is or may become in breach of its obligations under the Contract and any remedial action required as a result. The Contractor will not charge the Council for any costs incurred in attending the meetings.
   2. As soon as practicable following any meetings, the Authorised Officer will prepare minutes of the same and submit these to the Contractor’s Manager for his approval. Such approval should be given or withheld (as the case may be) within 10 Working Days of receipt of such minutes. Where no response is received within such period, the Contractor will be deemed to have agreed to such the content of the meeting minutes.
3. Performance Monitoring
   1. The Service shall be subject to such monitoring systems as the Authorised Officer considers appropriate to undertake and as set out in this clause 12.
   2. The Authorised Officer may investigate any case where the Contractor may have or appears to have failed to perform the Service in whole or in part in accordance with the provisions of the Contract (a “**Default**”).
   3. Where the Authorised Officer is satisfied that in any particular case the Contractor is in Default he may instruct the Contractor to remedy the failure within such reasonable period as the Authorised Officer may determine by issuing a notice (a “**Remediation Notice”**).
   4. Where the Contractor fails to comply with any Remediation Notice issued by the Authorised Officer, the Authorised Officer may issue a further notice (a “**Default Notice**”) to the Contractor specifying the nature of the Default and instructing the Contractor to remedy the Default within a reasonable period as determined by the Authorised Officer.
   5. If the Contractor fails to remedy any Default specified in a Default Notice within the reasonable period specified, the Authorised Officer may either:
      1. issue a further Default Notice every 24 hours until the Authorised Officer is satisfied that the Default concerned has been remedied, or
      2. following notification to the Contractor, take action to rectify the Default itself (including by instructing an alternative provider to rectify the same) and recover its additional costs of doing so from the Contractor as a debt.
   6. In addition to clause 12.5, where the failure amounts to a Persistent Breach, or is one which materially and adversely affects the performance of the Service or one which results in material damage to the reputation of the Council, notwithstanding that a Remediation Notice and/or Default Notice(s) has been issued pursuant to this clause 12, the Council shall be entitled to terminate the Contract forthwith and may invoke the termination provisions in Section 11.
   7. The administrative costs and the cost of travel and re-inspection incurred by the Council in respect of each Default Notice issued is £100.00 and the Council shall be entitled to deduct such sum from the Contractor’s monthly statement for each Default Notice issued, in addition to any deductions for failing to carry out the Service.
4. Variations to the Service
   1. No Variation of this Contract shall be effective unless it is in writing and signed by the Parties (or their duly authorised representatives).
   2. Unless the Variation expressly provides for an increase in payment, the Contract Price shall not be increased as a result of a Variation.
5. Financial Information & Audits
   1. The Contractor shall, as required by the Council, provide the Council with such financial information and data reasonably requested by the Council to enable the Council to:
      1. comply with the Code of Practice on Local Authority Accounting in the United Kingdom 2020/21 issued by the Chartered Institute of Public Finance and Accountancy (as the same may be updated or replaced from time to time); and
      2. examine, evaluate and be satisfied as to the Council’s minimum standards of economic and financial standing, technical and professional ability and general standing required of the Contractor with regard to the provision of the Services.
6. Contractor’s Records
   1. In addition to the information to be supplied in accordance with the Specification and in relation to payments, throughout the Contract Period the Contractor shall keep and maintain such necessary data and information and shall complete or provide such assistance as the Council may reasonably require by written notice to the Contractor to enable the Council to complete all official returns, including, but without limitation the following:
      1. returns to any central government body or properly authorised agency of central government;
      2. information required by any statutory body or compliance with any statute or statutory instrument; and
      3. information required pursuant to clause 32 (Equal Opportunities),

provided in each case that the nature of such data and information and the format for the same has been agreed by the parties or is specified by Law.

SECTION 4 – HEALTH AND SAFETY

1. Health & Safety
   1. The Contractor shall comply and ensure its Representatives comply at all times with the Health and Safety at Work etc. Act 1974 and all other Laws pertaining to health and safety of employees and other affected persons including, but not limited to, the Management of Health and Safety at Work Regulations 1999, and all other health, safety and welfare requirements applicable to the Service including those detailed in the Specification.
   2. The Contractor shall:
      1. conduct the Service so as to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Council’s employees and its Representatives;
      2. accept primary responsibility for all aspects of health and safety at the Contractor’s sites, in relation to provision of the Service at the Council’s Premises and for all persons using the Contractor’s Assets.

SECTION 5 – PREMISES AND ASSETS

1. Assets
   1. Except as otherwise specified in the Specification, the Contractor shall be responsible at its own cost for providing all equipment, vehicles, plant and materials necessary and/or used for the proper and efficient performance of the Service during the Contract Period (the “**Contractor’s Assets**”).
   2. The Contractor shall maintain all Contractor’s Assets in a safe condition so that they are fit for the purpose of delivering the Service and as a minimum comply with the requirements of the Contract and any manufacturers’ servicing and maintenance requirements.

**Rights Of Access**

* 1. The Council and its Representatives shall be entitled to access the Contractor’s Premises at all times during the Contract Period for the purpose of:
     1. monitoring and inspecting work being performed to provide the Service;
     2. interviewing Contractor’s Representatives engaged in connection with the provision of the Service; and
     3. inspecting the Contractor Assets and Council Assets and systems and procedures used by the Contractor to provide the Service.

SECTION 6 – WARRANTIES AND ACKNOWLEDGEMENTS

1. Indemnities
   1. The Contractor shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of contract, including but without limitation:
      1. any claim by a third party for damage occurring as a result of the Service;
      2. any breach of its obligations as set out in Section 9 (Personnel) of the Conditions of Contract;
      3. any breach of Law or Necessary Consents;

to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of contract or Law by the Council or its Representatives (excluding the Contractor).

1. Insurance
   1. The Contractor shall at its own cost take out and maintain the insurances listed at clause 19.2 (the **“Required Insurances”**) and any other insurances required by Law with reputable insurers who are authorised by the Financial Services Authority to conduct insurance business or equivalent.
   2. The Required Insurances referred to above are:
      1. Public Liability insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim in respect of Public Liability and in relation to all claims in the aggregate during any one period of insurance in respect of Products Liability;
      2. Employer's Liability insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) in relation to any one claim;
   3. The Required Insurances must remain in place for the Contract Period and be effective in each case not later than the date on which the relevant risk commences.
   4. As and when reasonably required in writing by the Council, the Contractor shall provide the Council with copies of current insurance certificates or other evidence demonstrating to the satisfaction of the Council that the requirements of this clause 19 are being met.
2. Council Liability
   1. Subject to clause 20.2 and 21.4, the Contractor acknowledges that the Council and its Representatives shall not be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy or misrepresentation of any information (in any case whether oral, written, express or implied) or any omission in respect thereof made or agreed to by any person (whether a party to the Contract or not).
   2. Clause 20.1 shall not apply to any statement, representation or warranty made fraudulently or to any provision of the Contract which was induced by fraud, for which the remedies available shall be all those available under Law.
3. Limitation of Liability
   1. Subject to clauses 18, 21.3 and 21.4 neither party shall be liable to the other party (as far as permitted by Law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, use, goodwill or business opportunities whether direct or indirect.
   2. Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this Contract.
   3. Subject to clause 21.4, the Contractor's total aggregate liability:
      1. Is unlimited in respect of:
         1. the indemnities in clauses 27 (Data Protection), 29.3 (Intellectual Property), 33 (TUPE) and clause 41 (Prevention of Bribery); or
         2. the Contractor's wilful default.
      2. in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Contract, shall in no event exceed one hundred and fifty percent (150%) of the aggregate Contract Price paid under or pursuant to the Contract in the applicable Contract Year in respect of which the claim arises
   4. Notwithstanding any other provision of this Contract neither party limits or excludes its liability for:
      1. fraud or fraudulent misrepresentation by it or its employees; or
      2. death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable); or
      3. any other act or omission, liability for which may not be limited or excluded by Law.
4. Contractor Warranties
   1. The Contractor warrants and represents that:
      1. it has the full capacity and has taken all steps and obtained all approvals to enable it to lawfully enter into and perform its obligations under the Contract;
      2. the Contract is executed by a duly authorised representative;
      3. there are no material facts or circumstances in relation to the financial position or operational constitution of the Contractor which have not been fully and fairly disclosed to the Council and which if disclosed might reasonably have been expected to affect the decision of the Council to enter into the Contract; and
      4. it has not committed any Prohibited Act in entering into this Contract or any other agreement with the Council and will not commit and such acts in the performance of or with regards to the extension of the terms of the Contract or other such agreement.
5. Reliance on Representations
   1. Each of the parties hereby confirms that it has not relied on any written or oral representation, warranty or undertaking of the other in entering into the Contract save for any such representation, warranty or undertaking expressly set out in the Contract. This clause 23 shall not apply so as to restrict the liability of any party hereunder in respect of any fraud or fraudulent misrepresentation.
6. Acknowledgements
   1. The Contractor shall be deemed to have satisfied itself before submitting its tender for the Service, as to the accuracy and sufficiency of any information provided by the Council. The Contractor agrees that it has ascertained for itself the accuracy of the information and shall also be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances that might reasonably influence or affect the Contractor's tender. The Contractor shall be deemed to have satisfied itself as to the nature and extent of the risks assumed by it under the Contract including the accuracy of the rates and prices stated in Schedule C (Contract Price Schedule).

SECTION 7 – INFORMATION AND IPR

1. Confidentiality
   1. Subject to clause 25.2, the parties shall treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written consent of the disclosing party and not use or exploit the disclosing parties Confidential Information in any way except for the purposes anticipated under the Contract.
   2. Clause 25.1 shall not apply to any disclosure of information:
      1. required by Law, provided that clause 25.4 shall apply to any disclosures required under the Information Laws;
      2. that is reasonably required by persons engaged by a party in the performance of such party’s obligations under this Contract;
      3. where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 25.1;
      4. by the Council of any document to which it is a party and which the parties to this Contract have agreed contains no commercially sensitive information;
      5. to enable a determination to be made under section 10 (Dispute resolution);
      6. which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
      7. by the Council, to any department, office or agency of the Government; and
      8. by the Council relating to this Contract and in respect of which the Contractor has given its prior written consent to disclosure
      9. On a confidential basis, to its professional advisors,
      10. to the Serious Fraud Office where the party has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010
   3. On or before the Expiry Date the Contractor shall ensure that all documents and/or computer records in its possession, custody or control which contain information relating to any of the Council’s Representatives or the Premises including any documents in the possession, custody or control of any sub-contractor, are delivered up to the Council or securely destroyed.
   4. The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of FOIA and EIR, the content of the Contract is not Confidential Information and the Contractor hereby gives its consent for the Council to publish the Contract in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA / EIR redacted) including any changes to the Contract agreed from time to time. The Council may consult with the Contractor to inform its decision in its absolute discretion regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA / EIR.
   5. The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcements or publicise the Contract or any part of the Contract in any way, except with prior written consent of the Council.
2. Freedom of Information
   1. The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with these information disclosure requirements.
   2. The Contractor shall and shall, at no additional cost to the Council, co-operate promptly with the Council’s reasonable requests for assistance in complying with its disclosure obligations under the Information Laws, provided that where the Council receives a request for information relating to this Contract which the Council reasonably considers to be commercially sensitive and/or confidential, where reasonably practicable, the Council shall not disclose the same without first:
      1. notifying the Contractor in writing; and
      2. allowing the Contractor such reasonable opportunity as it considers appropriate (taking into account timescales set by Law) to make representations to the Council as to disclosure of such information.
   3. The Council shall be responsible for determining at its absolute discretion whether the Information:
      1. is exempt from disclosure in accordance with the provisions of FOIA or the EIR;
      2. is to be disclosed in response to a Request for Information
   4. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.
3. Data Protection
   1. Both parties shall respectively at their own expense comply with all relevant and applicable requirements of the Data Protection Requirements. The specific obligations of the parties for data protection purposes shall be set out and further defined in Schedule D (Processing, Personal Data and Data Subjects). For the avoidance of doubt, this clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Requirements.
   2. The Contractor shall perform its obligations under this Contract in such a way as to ensure that it does not cause the Council to breach any of its applicable obligations under the Data Protection Requirements.
   3. The Contractor shall be liable for and shall indemnify the Council and keep the Council indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands incurred by the Council which arise directly from a breach by the Contractor of its obligations under the Data Protection Requirements, including without limitation those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Requirements by the Contractor or its employees, servants, agents or Sub-Contractors
   4. The parties shall where applicable, take into account any guidance issued by the Information Commissioner's Office regarding Personal Data. The Council may on not less than thirty (30) Working Days' notice to the Contractor amend the Contract to ensure that it complies with any such guidance.
4. Publicity and Branding
   1. The Contractor shall not:
      1. Make any press announcements or publicise this Contract or its contents in any way; or
      2. Use the Council's name or brand in any promotion or marketing or announcement of orders;

Without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

1. Intellectual Property Rights
   1. Save as expressly granted under the Contract, neither the Council nor the Contractor shall acquire any right title or interest in any Intellectual Property Rights vested in or licensed to the other party prior to or independently of the performance by the relevant party of its obligations under the Contract.
   2. The Contractor agrees that the Intellectual Property Rights under its reasonable control in any and all documents, drawings, designs, databases, data or other material in any format created by the Contractor in the course of and for the purpose of providing the Services on behalf of the Council shall be assigned to the Council. The Contractor shall execute or cause to be executed all deeds, documents and acts required to vest such Intellectual Property Rights in the Council.
   3. The Contractor shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have resulted directly from the Council’s failure properly to observe its obligations under this clause 29.3.

SECTION 8 - INFORMATION TECHNOLOGY

1. Information Technology
   1. The Contractor shall ensure that adequate security measures are put on its, and those of its agents and sub-contractors, IT equipment, personal computers, networks and systems used in the provision of the Services and to connect to the Council's systems networks equipment or facilities.
   2. All data and electronic information to which the Contractor its employees, agents, servants or sub-contractors come into contact with in the performance and pursuance of the Contract and the provision of the Services is confidential and must be treated in accordance with the provision of clause 25 relating to confidentiality.

SECTION 9 - PERSONNEL

1. Personnel
   1. The Contractor shall ensure that all individuals employed or engaged by it in connection with the Service are of suitable character and are appropriately qualified and experienced in the area of work which they are to perform and are not under the age of 16.
   2. The Contractor shall ensure that its Representatives:
      1. are adequately supervised and informed of the aspects of the Contract applicable to them so that they can comply with the Contract;
      2. shall deliver the Service with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Service;
      3. where specifically agreed to be provided, will be assigned to provide the Service;
      4. are appropriately attired for the duties they are undertaking including, (where necessary) wearing protective clothing and footwear;
      5. on request, disclose their identity to the Council or any third party;
      6. other than as permitted by the Contract, do not solicit or act in such a manner as to induce payment for performance of the Service;
      7. act in a courteous and considerate manner and do not use foul or offensive language, bring offensive materials onto or consume intoxicating liquor or illegal drugs or smoke whilst on Premises or providing the Service;
      8. do not bring animals or unauthorised persons onto the Premises except as expressly authorised by the Authorised Officer.
   3. Subject to clause 31.4, the Authorised Officer may require the Contractor, by notice in writing, which shall include his reasons for the same, to reprimand or remove from the provision of the Service any Representatives specified by such notice (including without limitation the Contractor’s Manager). Where required the Contractor shall forthwith remove such Representatives from the provision of the Service and provide a replacement as appropriate to ensure that the Service is carried out in accordance with the Specification. Any Representatives removed from work under the provisions of this clause 31.3 may not be employed subsequently in the provision of the Service without the written consent of the Authorised Officer.
   4. The Authorised Officer shall not require removal of personnel under clause 31.3 unless he has given due consideration as to whether the Council would (if the individual concerned were an employee of the Council) take the same action against such employee in the same or similar circumstances.
   5. The Council shall not be liable either to the Contractor or to any Representatives in respect of any liability loss or damage occasioned by the operation of clause 31.3.
2. Equal Opportunities, Human Rights and Equality and Diversity
   1. The Contractor shall have in place an equal opportunities policy. This policy must specify that the Contractor will not treat staff less favourably on the grounds of their colour, race, ethnic or national origin, nationality (including citizenship), marital status, sex, sexual orientation, religion or belief, age or because they have a disability. The policy must also specify that the Contractor will not tolerate behaviour, which is inconsistent with it, and detail the measures it will take if this occurs.
   2. In the performance of the Service and in its dealings with service users, Council employees and members of the general public, the Contractor shall comply and shall ensure that its Representatives comply with;
      1. the Human Rights Act 1998 as if the Contractor were a public body (as defined in the Human Rights Act 1998);
      2. all Laws relating to equal opportunities; and
      3. the Council's equal opportunities policies and procedures as may be adopted and amended from time to time.
   3. The Contractor shall abide by the following main principles of the Armed Forces Covenant in the provision of the Service and in its role as an employer.
      1. Those who serve or have in the past served in the Armed Forces, and their families, should face no disadvantage compared to other citizens in the provision of the Service.
      2. In some cases, special consideration is appropriate especially for those who have given most such as the injured or the bereaved.
   4. The Contractor shall make commitments to support the Armed Forces through the signing up to the Bronze Defence Recognition Scheme Award and Armed Forces Covenant Pledge within six (6) months of the date of this Contract.
   5. The Contractor shall provide within six (6) months of the date of this Contract and every six (6) months thereafter throughout the Contract Term a report (to the reasonable satisfaction of the Council) demonstrating compliance with the Armed Forces Covenant obligations set out in clauses 32.3 to 32.5.
3. TUPE
   1. Where a Subsequent Transfer constitutes a Relevant Transfer then the Council or Future Contractor will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
   2. The Contractor shall and shall procure that any Sub-Contractor shall:
      1. On request from the Council on a date not more than six (6) months immediately preceding the expiry of the Contract and/or any review date; and or
      2. On receiving notice of termination of the Contract (on whatever grounds and in whatever circumstances) or otherwise; and/or
      3. at such times as required by TUPE;

provide promptly (and in any event within fourteen (14) days of request) and at no cost to the Council, in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Services, the Contractor's Provisional Staff List and the Staffing Information together with any additional information required by the Council (notwithstanding this may be beyond the information required to be provided under TUPE), including information as to the application of TUPE to the employees. The Contractor shall notify the Council, within fourteen (14) days of the event (and in any event before the Service Transfer Date), of any material changes to the information supplied, discovery of further relevant information or on receipt of a request for or clarification or amplification by the Council.

* 1. At least twenty eight (28) days prior to the Service Transfer Date, the Contractor shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Future Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Contractor's and Sub-Contractor's personnel named are Relevant Employees.
  2. The Council shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Future Contractor for any services that are substantially the same type of services as (or any part of) the Services.
  3. The Contractor warrants to the Council and any Future Contractor that the Contractor's Provisional Staff List, the Contractor's Final Staff List, the Employee Liability Information and the Staffing Information (the “**TUPE Information**”) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Contractor's Final Staff List.
  4. The Contractor shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
  5. The Council regards compliance with this paragraph 33 as fundamental to the Contract. In particular, failure to comply with paragraphs 33.2 and 33.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Contract Price until such information is provided. The maximum sum that may be retained under this paragraph 33.7 shall not exceed to an amount equivalent to the Contract Price that would be payable in the three (3) month period following the Contractor’s failure to comply with paragraphs 33.2 and 33.3, as the case may be.
  6. Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6 months prior to termination of the Contract shall not (so far as reasonably practicable) take place without the Council’s prior written consent, unless such changes are required by law. The Contractor shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
  7. In the six (6) months prior to expiry or termination of the Contract or from the date of service of a termination notice of the Contract, the Contractor shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Contractor's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees or transfer or remove from the performance of the services any supervisory or managerial personnel without the Council's prior written consent (such consent not to be unreasonably withheld or delayed).
  8. The Contractor shall indemnify and keep indemnified in full the Council and each and every Future Contractor against all Employment Liabilities arising from or connected with:
     1. any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any of the Services; or
     2. any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor),
     3. any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
     4. any failure by the Contractor or any Sub-Contractor to supply or delay in supplying the Staffing Information, the Contractor’s Provisional Staff List, the Contractor’s Final Staff List and the Employee Liability Information and any other information herein required (or inaccuracy or incompleteness of the same) or to inform and consult in accordance with TUPE;
     5. any failure on the part of the Contractor or any Sub-Contractor to provide the Relevant Employees with any benefit of any nature including Appropriate Pension Provision or failure to make all due payments to the Relevant Employees or Pension Fund;
     6. any failure or omission of any legal or statutory obligation on the Contractor;
     7. any claim by any Relevant Employee arising out of any personal injury or injury at work of whatever nature prior to the termination of the Contract; and
     8. any other obligations of or arising under the Contract,

whether any such claim arises on or after the Service Transfer Date if it has its origins before such date.

* 1. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
  2. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 33.2 to 33.11, to the extent necessary to ensure that any Future Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Future Contractor by the Contractor or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
  3. Despite paragraph 33.12, it is expressly agreed that the parties may by agreement rescind or vary any terms of the Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

SECTION 10 – DISPUTE RESOLUTION

1. Referral to Officers
   1. If any dispute arises out of or in connection with the Contract, the parties shall promptly notify each other of the matter in dispute (“**Dispute**”), which shall in the first instance be referred to the Authorised Officer and the Contractor’s Manager who shall use all reasonable skill, care and diligence to ensure that they receive the views of all parties and considers all solutions proposed with the objective of resolving the dispute and achieving an agreed solution.
   2. Where the Authorised Officer and the Contractor’s Manager do not achieve within 14 days of notification of a Dispute a solution acceptable to all parties involved, and provided no right of termination has been exercised, then senior representatives of both parties shall meet promptly, and in any event within 21 days of notification of the Dispute, in good faith to discuss and seek to resolve the Dispute.
   3. Subject to clause 7 (Disputed Sums), the provision of the Service and the payment of the Charges shall not be affected or suspended in the event of and during any Dispute.
2. Mediation
   1. In the event that the Dispute cannot be resolved by negotiation or conciliation under clauses 34.1 and 34.2 within two (2) Months, or such other period as may be determined by the Council at its absolute discretion, both parties shall attempt to settle it by Mediation.
   2. If the parties fail to resolve the Dispute by mediation within two (2) Months of the Mediator being appointed, or such longer period as may be agreed between the parties, then any dispute or difference between them may be referred to the courts pursuant to clause 52 (Law of Contract and Jurisdiction).

SECTION 11 - TERMINATION

1. Expiry & Termination
   1. This Contract shall terminate automatically on the Expiry Date unless it shall have been terminated earlier in accordance with the provisions of the Conditions of Contract. For the avoidance of doubt the Contractor shall not be entitled to any compensation on expiry.
   2. The Council may terminate the Contract by giving not less than one (1) months’ notice in writing to the Contractor, such notice to expire at any time. For the avoidance of doubt the Contractor shall not be entitled to any compensation on such expiry.
   3. The Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if the Contractor:
      1. becomes Insolvent;
      2. commits a breach of any of its obligations under the Contract which: (1) materially and adversely affects the performance of the Services; (2) may or will cause a health and safety risk or (3) results in damage to the reputation of the Council provided that if such breach is in the reasonable opinion of the Council capable of remedy, the Council may only terminate the Contract under this clause 36.3.2 if the Contractor has failed to remedy such breach within thirty (30) days (or such shorter timescale as the Council specifies and is reasonable in the circumstances) after receipt of written notice from the Council to remedy the breach;
      3. commits a Persistent Breach;
      4. commits a Prohibited Act;
      5. fails to provide the Services during a continuous period of seven (7) days or for a total period of ten (10) days in any three (3) Month period during the Contract Period other than as a result of a Force Majeure Event; or
      6. fails to obtain or loses any Necessary Consent or has any Necessary Consent varied or restricted the effect of which might reasonably be considered by the Council to have a material adverse affect in the performance of the Services.
      7. makes an assignment or novation of this Contract in breach of clause 39 (Assignment) or sub contracts the Services or any part of the Services in breach of clause 40 (Sub-Contracting);
      8. breaches any of its obligations under clause 19 (Insurance);
      9. undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 to which the Council reasonably objects.
   4. If a Force Majeure Event prevents either Party from performing its obligations under the Contract in any material respect for a period of 3 (three) consecutive months, then provided the notification requirements set out in clause 42 (Force Majeure) have been met, without prejudice to any accrued rights or remedies under the Contract, either Party may terminate the Contract by notice in writing to the other Party having immediate effect.
   5. The Council may terminate the Contract, in whole or in part, by giving such period of notice as the Council reasonably considers is necessary in the circumstances, in writing, to the Contractor if it reasonably believes that any of the circumstances set out in regulation 73(1)(a) or 73(1)(c) of the Public Contracts Regulations 2015 apply, such notice to expire at any time. For the avoidance of doubt the Contractor shall not be entitled to any compensation on such termination.
2. Effect of Termination or Expiry
   1. Where the Contract is terminated the Council shall not be required to make further payments under the Contract until the costs, loss and/or damage due under the Contract have been calculated and when such payment become due the Council shall be entitled to withhold from such payments the costs, loss and/or damages due to it under the Contract; and
   2. The Contractor shall co-operate fully with the transfer of responsibility for the Service (or any of the Service) to any Future Contractor undertaking such Service.

SECTION 12 - GENERAL

1. Relationship of Parties
   1. The Contractor shall not be or be deemed to be an agent of the Council and the Contractor shall not hold itself out as having authority or power to bind the Council in any way, other than expressly conferred by this Contract.
   2. Nothing in the Contract shall be construed as creating a partnership within the meaning of the Partnership Act 1890, or as a contract of employment between the Contractor and the Council.
2. Assignment
   1. The Contractor shall not assign or otherwise dispose of any of its rights or benefits under the Contract other than except with the express agreement of the Authorised Officer, and provided that the Contractor undertakes to pay all reasonable expenses incurred by the Council in connection with the proposed assignment whether or not the assignment is completed.
3. Sub-Contracting
   1. The Contractor shall not be entitled to sub-contract, sub licence or otherwise dispose of the provision of the Service or any part thereof without the prior written consent of the Council.
   2. In the event that the Contractor enters into any sub-contract in connection with this Contract it shall:
      1. remain responsible to the Council for the performance of its obligations under the Contract notwithstanding the appointment of any sub-contractor and be responsible for the acts omissions and neglects of its sub-contractors;
      2. impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this Contract and shall procure that the sub-contractor complies with such terms; and
      3. provide a copy, at no charge to the Council, of any such sub-contract on receipt of a request for such by the Authorised Officer.
      4. ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
4. Prevention of Bribery
   1. If the Contractor or anyone acting on its behalf or to its knowledge (whether such person is a Contractor Representative or a Council Representative) commits any Prohibited Act in relation to the Contract or any other agreement with the Council or in relation to any matter or activity pertaining to any public body in the United Kingdom, the Contractor shall promptly inform the Council of the occurrence of such Prohibited Act and render all such assistance to the Council as the Council may reasonably require in investigating such acts.
5. Force Majeure
   1. If any party is delayed in or prevented from performing any of its obligations under the Contract by a Force Majeure Event then, so long as that Force Majeure Event continues, that party shall be excused from performance of such obligations to the extent it is so delayed or prevented, and the time for performance of such obligation shall be delayed accordingly.
   2. On the occurrence of a Force Majeure Event, the affected party shall notify the other party as soon as practicable. Such notification shall contain details of the Force Majeure Event, including evidence of its effect on the obligations of the affected party and any action proposed to mitigate its effect.
   3. As soon as practicable following such notification, the parties shall consult each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the impact of the Force Majeure Event and facilitate continued performance of the Contract.
   4. The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer delays or prevents the affected party from complying with its obligations under the Contract. Following such notification (subject to termination under clause 36.4), the Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
   5. For the duration of any suspension of the Contractor’s obligations under this clause 60, the Council shall only be liable to pay the Contractor an amount that reflects the reduced Service (if any) being performed.
6. Good Faith
   1. The parties shall, and shall procure that their Representatives shall, at all times in relation to the Contract and the performance of the Service, act reasonably and in good faith.
   2. Except where expressly stated otherwise, any decision, agreement, request, consent, approval (including whether performance is to the satisfaction of a party), action or other step of a similar nature required to be taken by a party shall be taken reasonably and in good faith and it shall be reasonable to withhold or delay such decision, agreement et cetera on the grounds of non-compliance by the other party with Laws or, a materially adverse effect on the proper performance of the Service.
7. Illegality
   1. In the event that any part of this Contract shall become or be declared void, invalid, illegal or unenforceable for any reason whatsoever including by reason of the provisions of any Law or any decision of any Court or Regulatory Body having jurisdiction over the parties or this Contract, the parties hereby expressly agree that the remaining parts and provisions of this Contract shall continue in full force and effect with such amendments as are necessary to ensure that the balance of obligations remains so far as possible the same as under the Contract or as may be agreed between the parties.
8. Survival
   1. Termination of the Contract for any reason shall not affect this clause 65 and the following clauses or Sections, which shall continue in force after such termination**:** clause 1 (Definitions and interpretation), clause 7 (Disputed Sums), clause 9 (Set-Off), section 6 (Warranties and Acknowledgements), clause 25 (Confidentiality), clause 26 (Freedom of Information), clause 33 (TUPE), Section 10 (Dispute Resolution), Section 11 (Termination), clause 39 (Assignment), clause 40 (Sub-contracting), clause 48 (Notices); clause 52 (Law of contract and jurisdiction).
9. Waiver
   1. No term or provision of the Contract shall be considered as waived by any party unless a waiver is given in writing by that party and specifically states that it is a waiver of such term or provision. No waiver under this clause 46.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, clauses or provisions of this Contract unless (and then only to the extent that) it is expressly stated in that waiver.
10. Third Party Rights
    1. Subject to clause 33.12, it is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that the Contract is not intended to, and does not, give to any person who is not a party to the Contract any rights to enforce any provisions contained in the Contract except for any person to whom the benefit of the Contract is assigned in accordance with clause 39 (Assignment).
11. Notices
    1. Any notice required by the Contract to be given by either Party to the other shall be in writing and shall be served personally or by sending it by both email and registered post or recorded / signed for delivery to the appropriate address notified to each other. Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by email and post will be deemed to have been served forty eight (48) hours after it was posted save where the deemed date of service falls on a day other than a Working Day in which case the date of service will be the following Working Day.
12. Entire Agreement
    1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
    2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
13. Rights and duties reserved
    1. Save as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract 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 Contract (howsoever arising) on the part of the Council to the Contractor.
14. Counterparts
    1. The Contract may be executed in one or more counterparts and any party may enter into the Contract by executing a counterpart. Any single counterpart or a set of counterparts executed in either case by all of the parties shall constitute one and the same agreement and a full copy of the Contract for all purposes.
15. Law of Contract and Jurisdiction
    1. The Contract shall be governed by the Laws of England and Wales and subject to Section 10 (Dispute Resolution) the parties submit to the exclusive jurisdiction of the courts of England.

**IN WITNESS** of which this Agreement has been duly executed by the parties.

Signed for and on behalf of the Council by:-

Signed (Authorised Signatory)

Printed Name

Position…………………………………………

Signed for and on behalf of the Contractor by:-

Signed (Authorised Signatory)

Printed name

Position…………………………………………

# SCHEDULE A – DEFINITIONS

In accordance with clause 1.1, in this Contract the following words shall have the meanings set out below:

|  |  |
| --- | --- |
| "1999 Act" | Means the Local Government Act 1999. |
| "Acquired Rights Directive" | means Directive 77/187/EEC as amended and updated; |
| "Armed Forces Covenant" | The Armed Forces Covenant and the associated guidance is available at: <https://www.gov.uk/government/collections/armed-forces-covenant-supporting-information> |
| "Armed Forces Covenant Pledge" | A pledge that the Contractor is required to make as a firm commitment to the Armed Forces Covenant and to undertaking specific actions to uphold the Armed Forces Covenant principles. For details please see: <https://www.gov.uk/government/collections/armed-forces-covenant-supporting-information>. |
| “Authorised Officer” | the representative(s) of the Council,  Name: Donna Moore  Job Title: Town Centre Regeneration Manager  Address: Gosport Borough Council, town Hall, High Street, Gosport, PO12 1EB  Phone: 023 9254 5648  Email: donna.moore@gosport.gov.uk  as the same may be replaced or delegate his functions from time to time; |
| "Bribery Act" | The Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation. |
| “Commencement Date” | [insert contract start date] or such other date as agreed between the parties; |
| “Conditions of Contract” | 1 to 52 (inclusive) of this Contract; |
| "Confidential Information" | means all information, whether written or oral (however recorded), provided by the disclosing party to the receiving party and which is (i) known by the receiving party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving party to be confidential; |
| “Contract” | this Contract including the Conditions of Contract and all schedules and appendices referred to herein and/or attached hereto; |
| “Contract Period” | the Initial Period plus any extension under clause 2; |
| “Contract Price” | the charges/fees payable by the Council in accordance with the Contract as ascertained by the sums set out in Schedule C (Contract Price Schedule) as amended in accordance with the Contract; |
| "Contract Year" | means a period of twelve (12) months, commencing on the Commencement Date and anniversary thereof, with the final Contract Year ending on the Expiry Date or termination of the Contract; |
| “Contractor’s Manager” | the representative of the Contractor with status as per clause 10 who from the Commencement Date is;  Name: Sarah Willett  Job Title: corporate Project Manager, Economic Prosperity, Tourism and Culture  Address: Gosport Borough Council, town Hall, High Street, Gosport, PO12 1EB  Phone: 023 9254 5647  Email: Sarah.willett@gosport.gov.uk  as the same may be replaced from time to time; |
| "Contractor's Final Staff List" | means the list of all the Contractor's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date; |
| "Contractor's Provisional Staff List" | means the list prepared and updated by the Contractor of all the Contractor's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list, and in the format requested by the Council; |
| “Contractor's Assets” | as defined at clause 17; |
| "Controller" | takes the meaning given in the GDPR; |
| “Council Assets” | as defined at clause 17; |
| "Data Loss Event" | any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under the Contract and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach; |
| "Data Protection Impact Assessment" | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| "Data Protection Officer" | takes the meaning given in the GDPR; |
| “Data Protection Requirements” | Laws and regulations that apply in relation to the processing of personal data and are in force from time to time in the UK including (without limitation) the GDPR, the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended, together with any replacement or additional legislation coming into effect from time to time, together with any codes of practice or other guidance issued by the Information Commissioner’s Office; |
| "Data Subject" | takes the meaning given in the GDPR; |
| "Data Subject Access Request" | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Requirements to access their Personal Data; |
| “Default” | as defined at clause 12; |
| “Default Notice” | a notice issued by the Council in accordance with clause 12; |
| “DPA 2018” | the Data Protection Act 2018; |
| "Disclosure and Barring Service" | the body corporate of that name formed and constituted under section 87 of the Protection of Freedoms Act 2012; |
| “Employee Liability Information” | means the Information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of TUPE;   1. the identity and age of the employee; 2. the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); 3. information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applies, within the previous two (2) years; 4. information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two (2) years or where the transferor has reasonable grounds to believe that such action may be brought against the Contractor arising out of the employee's employment with the transferor; and 5. information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE. |
| "Employment Liabilities" | means all claims, including without limitation claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses; |
| “Environmental Liability” | all costs, expenses, liabilities, claims, damages, penalties or fines arising from any criminal or civil liability under any Law or any obligation under any Law to take, or to pay for, remedial action or to prevent pollution of the environment; |
| “Expiry Date” | the end of the Contract Period; |
| “Fees Regulations” | the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004; |
| “Force Majeure Event” | war, natural flood, exceptionally adverse weather conditions, strike or lockout (other than a strike or lock-out which is limited to the Contractor’s Representatives), civil disorder, Act of God, power cuts or delays epidemic or pandemic (excluding <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19> and all restrictions or lockdown measures or vaccination measures imposed in connection with it) or other wholly exceptional events outside the control of the parties which could not have reasonably been foreseen or avoided; |
| “Future Contractor” | any person contracted to provide service to the Council the same as or similar to the Service at any time in substitution of the Contractor or any sub–contractor (in whole or part), whether or not after expiry or termination of this Contract; |
| "GDPR" | means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulations), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdraw) Act 2018 (see section 205(4))*;* |
| “Good Industry Practice” | 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 engaged as the case may be in the same type of undertaking as that of the Contractor under the same or similar circumstances at the relevant time for such exercise; |
| "Information" | Has the meaning given under section 84 of the Freedom of Information Act 2000 |
| “Information Laws” | the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Act 1998 and any codes of practice and guidance made pursuant to the same as amended or replaced from time to time; |
| “Insolvent ” | in relation to the Contractor:   1. any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed); 2. a supervisor, receiver, administrator, administrative receiver or other encumbrancer of a similar nature taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) upon the whole or any material part of the Contractor’s assets 3. a court makes an order that the Contractor be wound up or a resolution for a voluntary winding up of the Contractor is passed 4. ceasing or threatening to cease to carry on business or being or being deemed to be unable to pay its debts when they become due within the meaning of Section 123 Insolvency Act 1986 |
|  | 1. being an individual(s), has a bankruptcy order made against him or compounds with his creditor or comes to any arrangements with any creditors; |
| “Initial Period” | a period of 3 years from the Commencement Date; |
| “Intellectual Property Rights” | any and all patents, trademarks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether now or in the future subsisting in the United Kingdom or any other part of the world together with all or any goodwill and accrued rights of action; |
| “Law” | means any applicable statute or any delegated or subordinate legislation, any duly applicable guidance, code of practice, direction, judgment or determination with which the Council and/or the Contractor is bound to comply including the Council’s rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards from time to time and any EU laws or regulations that are retained in domestic law in accordance with the European Union (Withdrawal) Act 2018; |
| “Necessary Consents” | all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation all planning permissions and waste management licences; |
| “Persistent Breach” | a continuing breach or series of breaches which has recurred 6 or more times within a two month period after the Council has issued at least one Remediation Notice to the Contractor in respect of each continuing breach or series of breaches; |
| "Personal Data" | takes the meaning given in the GDPR; |
| "Personal Data Breach" | takes the meaning given in the GDPR; |
| “Premises” | the location(s) at which the Services are to be delivered by the Contractor; |
| "Processor" | takes the meaning given in the GDPR; |
| “Prohibited Act” | 1. to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to: (i) induce the person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; 2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement; 3. committing any offence:    1. under the Bribery Act 2010; or    2. under sub-section (2) of Section 117 of the Local Government Act 1972;    3. under legislation or common law concerning fraudulent acts; or    4. defrauding, attempting to defraud or conspiring to defraud the Council; or    5. any activity, practice or conduct which would constitute one of the offences listed in this definition of Prohibited Act, if such activity, practice or conduct had been carried out in the UK. |
| "Protective Measures" | appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it; |
| “Quality Standard” | an appropriate and current British Standards Specification or British Standard Code of Practice issued by the British Standard Institution or any similar European Union standard applying to goods or Service relating to the Service or equivalent; |
| “Regulatory Body” | government Departments and agencies or any other regulatory Council or body (other than the Council) including any health and safety enforcement agency, with power to regulate the Service and their respective successors and substitutes; |
| “Relevant Employees” | means those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Council or Future Contractor by virtue of the application of TUPE; |
| “Relevant Transfer” | a relevant transfer for the purposes of TUPE in relation to the provision of the Services including upon or as a result of termination of this Contract; |
| “Remediation Notice” | as defined in clause 12; |
| “Representative” | any employee, officer, director, worker, consultant, agent or contractor engaged by a party in connection with the Service including any sub-contractor; |
| "Request for Information" | has the meaning set out in the FOIA or the EIR as relevant (where the meaning set out for the term "request" shall apply; |
| “Required Insurances” | as defined at clause 19; |
| “Service” | the Service, supplies and/or works to be provided by the Contractor under the Contract as more particularly described in the Specification and any Variation thereto made in accordance with this Contract; |
| “Service Transfer Date” | means the date on which the Services (or any part of the Services), transfer from the Contractor or Sub-contractor to the Council or any Future Contractor; |
| “Specification” | the specification at Schedule B detailing the Service; |
| "Staff" | means all directors, officers, employees, agents, consultants and contractors of the Contractor and / or of any sub-contractor of the Contractor engaged in the performance of the Contractor's obligations under the Agreement; |
| "Staffing Information" | means in relation to all persons detailed on the Contractor's Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services; |
| "Sub-processor" | any third party appointed to process Personal Data on behalf of the Contractor related to the Contract; |
| "Subsequent Transfer" | means, following the commencement of this Contract, circumstances whereby the identity of the provider of the Services (or any part of the Services) changes (whether as a result of termination of this Contract, or part or otherwise) resulting in a transfer of the Services in whole or in part from the Contractor to the Council or Future Contractor; |
| “TUPE” | the Transfer of Undertakings (Protection of Employment) Regulations 2006; |
| “VAT” | value added tax or any similar or substituted tax; |
| “Variation” | a variation of the Service or the Contract in accordance with the Contract; |
| “Working Days” | Monday to Friday inclusive of each week excluding Christmas Day, Good Friday and Bank Holidays in England |

# SCHEDULE B – SPECIFICATION

*[*The Council is looking to commission the provision of data relating to footfall in and around the specified areas of the borough.

This information will enable The Council to analyse footfall and visitor behavior to understand trends.

The Council is looking to commission this supply of data for the next 3 years.

The requirements of this contract are to provide:

* The identification and tracking of visitors by their demographic
* Identification of where visitors live and work, their preferences and behaviours
* An understanding of the amount of time individuals spend in a specified location, how many businesses/locations they visit and information on the patterns and changes in behaviour over weeks/months.
* The ability to determine geographical areas from which data is collected and amend these as and when required throughout the life of the contract.
* The ability to compare local data with that collected in other areas of the country
* The ability for the collected data to be directly compared to historic data in order that changes in trends can be identified and how initiatives and events impact visitor numbers can be demonstrated.
* Immediate access to data that can be used to positively support applications for new grant funding to initiate schemes that will contribute to the Councils Corporate Strategies.
* In-house access to the data platform from which staff can extrapolate collected information as and when required
* On-going training and support for existing Council staff and new starters on the use of the platform and additional training throughout the life of the contract where there are updates made to the system or software or whenever this is requested by the Council.
* An e-mailed monthly summary report of footfall and other headline data as required by the Council

The Supplier must offer open lines of communication via phone and email for The Council staff to receive advice and discuss requirements. This must be available Monday to Friday from 9am until 5pm.

# SCHEDULE C – CONTRACT PRICE SCHEDULE

The Council shall pay to the Contractor the Contract Price for the elements of the Service as set out in the table below:

*[Contractor’s tender submission to be inserted here unless otherwise agreed]*

1. **Invoicing** 
   1. The invoice referred to in clause 6.2 shall be rendered on the Contractor's own invoice form and shall show;
      1. a council contact name and address,
      2. your name and address,
      3. your bank details,
      4. the Purchase Order number,
      5. a unique invoice number,
      6. full breakdown of the goods or service provided,
      7. VAT charged and VAT number (if applicable)
   2. Invoices shall be submitted to the Council's Accounts Payable team by email to accounts.payable@gosport.gov.uk.

# SCHEDULE D – PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. **Background**
   1. The parties acknowledge that it is not intended that any Personal Data shall be processed under this Contract or in the provision of the Services.
2. **Obligations**
   1. Should it be required that Personal Data is Processed under this Contract or in the provision of the Services, the parties shall enter into a separate data processing agreement (in a form to be agreed), detailing the parties' respective obligations in accordance with the Data Protection Requirements.