



## SUPPLY OF SERVICES AGREEMENT

### CONDITIONS

#### 1 DEFINITIONS AND INTERPRETATION

1.1 This Agreement is made up of the following documents:

1.1.1 the Schedules; and

1.1.2 these Conditions.

1.2 Inconsistencies between any documents forming part of this Agreement shall be resolved in the following order of precedence:

1.2.1 Schedule 3 (*Specification*); followed by

1.2.2 these Conditions; followed by

1.2.3 all other Schedules to which the Parties are a party.

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

1.3.1 “**Agreement**” means this contract between (i) the Council and (ii) the Supplier including the accompanying Schedules.

1.3.2 “**Agreement Period**” means the period commencing on the Commencement Date of the Agreement and ending on the date of its expiry as set out in the Specification (Schedule 3).

1.3.3 “**Commencement Date**” means the date of this Agreement.

1.3.4 “**Conditions**” means these conditions consisting of the clauses herein.

1.3.5 “**Confidential Information**” means all information, whether written or oral (however so recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; or (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential.

1.3.6 “**Council**” means Bournemouth, Christchurch and Poole Council and such term shall include its duly authorised representatives.

1.3.7 “**Controller**”, “**Processor**”, “**Process**”, “**Processing**”, “**Data Subject**”, “**Personal Data**”, “**Personal Data Breach**” and “**Data Protection Officer**” shall take the meanings given to them in the Data Protection Legislation and their cognate terms shall be construed accordingly.



- 1.3.8** “**Data Loss Event**” means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
- 1.3.9** “**Data Protection Impact Assessment**” means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.
- 1.3.10** “**Data Protection Legislation**” means all applicable data protection and privacy legislation in force from time to time in the United Kingdom including the UK GDPR, the DPA 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.
- 1.3.11** “**Data Subject Access Request**” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- 1.3.12** “**Default**” means any breach of the obligations of the Supplier or any Default, act, omission or negligence of the Supplier in connection with the subject matter of this Agreement.
- 1.3.13** “**DPA 2018**” means the Data Protection Act 2018.
- 1.3.14** “**EIR**” means the Environmental Information Regulations 2004.
- 1.3.15** “**FOIA**” means the Freedom of Information Act 2000.
- 1.3.16** “**Force Majeure Event**” means any circumstance not within a Party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
  - (b) epidemic or pandemic;
  - (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
  - (d) nuclear, chemical or biological contamination or sonic boom;
  - (e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; and
  - (f) collapse of buildings, fire, explosion or accident.



- 1.3.17** “**Intellectual Property**” means patents, rights to inventions, registered and unregistered design rights, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, patterns models, designs, moral rights, title, proprietary rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extension of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.
- 1.3.18** “**Law**” means the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the performance of this Agreement or with which a Party is bound to comply.
- 1.3.19** “**Party**” means the Council or the Supplier (as appropriate) and “**Parties**” shall mean both of them.
- 1.3.20** “**Price**” means the price to be paid by the Council to the Supplier for the Services exclusive of Value Added Tax as set out in Schedule 2 (*Price and Payment*).
- 1.3.21** “**Protective Measures**” means appropriate technical and organisational measures which may include: pseudonym-ising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident and regularly assessing and evaluating the effectiveness of such measures.
- 1.3.22** “**Services**” means the services which the Supplier agrees to supply to the Council as more particularly set out in the Specification (Schedule 3).
- 1.3.23** “**Specification**” means the description of the Services to be supplied to the Council under this Agreement, including any particular requirements for the Services specified by the Council, as set out in Schedule 3.
- 1.3.24** “**Sub-processor**” means any person appointed to Process Personal Data on behalf of the Supplier related to this Agreement.
- 1.3.25** “**Supplier**” means the person or organisation that is providing the Services and such term shall include its employees, agents, successors and permitted assigns.
- 1.3.26** “**Supplier Personnel**” means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under this Agreement.



**1.3.27** “**UK GDPR**” shall take the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

**1.3.28** “**Working Day**” means Monday to Friday from 9:00am to 5:00pm inclusive other than bank holidays and any other public holidays, or such other periods as may be specified in the Specification (Schedule 3).

**1.4** In this Agreement, unless the context otherwise requires:

**1.4.1** references to numbered clauses are references to the entirety of that relevant clause in this Agreement;

**1.4.2** any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

**1.4.3** any obligation on a Party to do any act, matter or thing includes an obligation to procure that it is done;

**1.4.4** the headings to the clauses of this Agreement are for information only and do not affect the interpretation of this Agreement;

**1.4.5** the reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to that statute, enactment, order, regulation or instrument as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

**1.4.6** a “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

**1.4.7** unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

**1.4.8** unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

**1.4.9** the words “**include**”, “**includes**” and “**including**” are to be construed as if they were immediately followed by the words “without limitation”.

## **2 COMMENCEMENT AND DURATION**

**2.1** This Agreement shall take effect on the Commencement Date and shall continue for the Agreement Period set out in the Specification (Schedule 3) as may be varied by an extension period in accordance with Clause 2.2 or by the earlier termination of this Agreement in accordance with its provisions.

**2.2** The Parties may extend this Agreement by written agreement.



### **3 SUPPLY OF SERVICES**

- 3.1** In consideration of the Council's agreement to pay the Price, the Supplier shall supply the Services to the Council for the Agreement Period subject to and in accordance with this Agreement.
- 3.2** In supplying the Services, the Supplier shall cooperate with the Council in all matters relating to the supply of the Services and comply with all instructions provided by the Council.
- 3.3** The Supplier shall provide the Services in accordance with the Specification (Schedule 3). In supplying the Services, the Supplier warrants, represents, undertakes and guarantees that it shall:
- 3.3.1** provide the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 3.3.2** use appropriately experienced, qualified and trained employees and/or permitted sub-contractors in the performance of its obligations under this Agreement;
  - 3.3.3** ensure that the Services conform to all descriptions and specifications set out in the Specification (Schedule 3);
  - 3.3.4** comply with all applicable Law;
  - 3.3.5** provide all equipment, tools, vehicles and other items as are required to provide the Services; and
  - 3.3.6** ensure that any goods and materials used or supplied in respect of the Services and their workmanship comply with any applicable British Standard Specification, British Standard Code of Practice or other recognised standard laid down by a regulatory body for the industry concerned.

### **4 PRICE AND PAYMENT**

- 4.1** The Price for the Services shall be as set out in Schedule 2 (*Price and Payment*) and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Council, the Price shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Services.
- 4.2** The amounts stated are exclusive of VAT which shall be charged at the prevailing rate.
- 4.3** The Supplier shall produce a valid written invoice and provide it to the Council. The invoice must clearly state the relevant purchase order number. The invoice must



also contain any supporting evidence requested by the Council in order to verify the accuracy of the invoice to include a breakdown of the Services supplied in the invoice period.

- 4.4** Where the Supplier submits an invoice to the Council in accordance with the foregoing, the Council shall verify that invoice within seven (7) Working Days of receipt.
- 4.5** The Council shall pay the Supplier any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Council has determined that the invoice is valid and undisputed.
- 4.6** Where the Council fails to comply with Clause 4.4, and there is an undue delay in verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 4.5 seven (7) Working Days after the date on which it is received by the Council.
- 4.7** If the Supplier's invoice is or appears to be in error and has to be investigated, the date of receipt and consequently the date by which payment is due shall be measured from the date on which such queries are satisfactorily resolved or, if applicable, the date on which a re-submitted correct invoice is received.
- 4.8** Without prejudice to any other right or remedy of the Council, the Council may make reductions in payment in respect of the whole or any part of the Services which the Supplier has failed to provide or has provided inadequately.
- 4.9** In the event that the Supplier enters into a sub-contract, liability to pay the sub-contractor remains with the Supplier. The Supplier shall not invoice the Council for the sub-contractor's charges as an expense.
- 4.10** The Council may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Council.
- 4.11** The Supplier shall not make any payments due to the Council with any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.

## **5 PREMISES AND EQUIPMENT**

- 5.1** If necessary, the Council shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Council's premises by the Supplier or the Supplier Personnel shall be at the Supplier's own risk.
- 5.2** If the Supplier supplies all or any of the Services at or from the Council's premises, on completion of the Services or termination or expiry of this Agreement (whichever event is earliest) the Supplier shall vacate the Council's premises, remove the Supplier's plant, equipment and other unused materials as well as all



rubbish arising from the provision of the Services and leave the Council's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Council's premises or any objects contained on the Council's premises which is caused by the Supplier or the Supplier Personnel, other than fair wear and tear.

- 5.3** If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Council may, on a Working Day and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 5.4** The Council shall be responsible for maintaining the security of its premises in accordance with its own standard security requirements. While on the Council's premises the Supplier shall, and shall procure that the Supplier Personnel, comply with all the Council's security requirements.
- 5.5** Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Council in writing.
- 5.6** Without prejudice to Clause 3.3.5, any equipment provided by the Council for the purposes of this Agreement shall remain the property of the Council and shall be used by the Supplier and the Supplier Personnel only for the purpose of providing the Services. Such equipment shall be returned promptly to the Council on termination or expiry of this Agreement.
- 5.7** The Supplier shall reimburse the Council for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or the Supplier Personnel. Equipment supplied by the Council shall be deemed to be in a good condition when received by the Supplier or the Supplier Personnel unless the Council is notified otherwise in writing within five (5) Working Days of receipt.

## **6 STAFF AND KEY PERSONNEL**

- 6.1** If the Council reasonably believes that any of the Supplier Personnel are unsuitable to undertake the work in respect of this Agreement, it may, by giving written notice to the Supplier:
  - 6.1.1** refuse admission to the relevant person(s) to the Council's premises;
  - 6.1.2** direct the Supplier to end the involvement of the relevant person(s) in the provision of the Services; and/or
  - 6.1.3** require that the Supplier replace any person(s) removed under this clause with another suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered,

and the Supplier shall comply with any such notice.



**6.2** The Supplier shall:

**6.2.1** ensure that all Supplier Personnel are adequately vetted;

**6.2.2** if requested, provide the Council with a list of the names and addresses (and any other relevant information) of all the persons who may require admission to the Council's premises in connection with this Agreement; and

**6.2.3** procure that all Supplier Personnel comply with any rules, regulations and requirements reasonably specified by the Council.

**6.3** Any key personnel shall not be released from supplying the Services without the prior written agreement of the Council, except by reason of long-term sickness, maternity or paternity leave, termination of employment or other extenuating circumstances.

**6.4** Any replacement to the key personnel shall be subject to the prior written agreement of the Council (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent expertise and skills to the key personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

**7 PERFORMANCE AND REVIEW**

**7.1** The Supplier shall comply with the Council's reasonable requests (on a free-of-charge basis) to keep records, attend performance review meetings, make any reports and permit any tests and inspections that the Council may reasonably require during the Agreement Period.

**7.2** Any requirements for audit, monitoring and review of the supply of the Services are specified in the Specification (Schedule 3).

**7.3** Where the Supplier is providing services to third parties, the Supplier shall provide the Council with a copy of its complaints handling policy and procedures and (where applicable to this Agreement) shall discuss complaints and feedback from third party users of the Services at performance review meetings.

**7.4** The Supplier shall permit appropriate and properly authorised and trained representatives of the Council to enter on any construction site and/or site of operation for the Services at any reasonable time and have free and unfettered access to each and every part of any area affected by this Agreement.

**8 CANCELLATION**

**8.1** The Council may at any time up to 24 hours prior to the commencement of the Services amend or cancel a purchase order by written notice to the Supplier.





- 8.2** If the Supplier receives the written notice in accordance with Clause 8.1 at any time up to 24 hours prior to commencement of the Services, the Supplier shall not be entitled to recover any costs from the Council in relation to an amendment or cancellation of a purchase order.
- 8.3** If the Council amends or cancels the purchase order less than 24 hours prior to the commencement of the Services, the Supplier shall be entitled to reimbursement of its reasonably incurred costs provided that it mitigates such costs and provides evidence of those costs to the reasonable satisfaction of the Council.
- 8.4** For the avoidance of doubt, where the amendment or cancellation of the purchase order is directly or indirectly due to the Supplier's failure to comply with its obligations under this Agreement, the Council shall have no liability to the Supplier in respect of such amendment or cancellation.

## **9 INTELLECTUAL PROPERTY RIGHTS**

- 9.1** The supply of the Services shall not infringe the Intellectual Property rights of any third party.
- 9.2** All Intellectual Property in any specifications, information, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by the Council or obtained by the Supplier in connection with this Agreement shall remain vested solely in the Council and shall be kept confidential.
- 9.3** This clause shall apply both during this Agreement and after its completion or its termination.
- 9.4** In the absence of prior written agreement by the Council to the contrary, all Intellectual Property rights created by the Supplier or Supplier Personnel:
- 9.4.1** in the course of supplying the Services; or
  - 9.4.2** exclusively for the purpose of supplying the Services,
- shall vest in the Council on creation.
- 9.5** The Supplier shall indemnify, and keep indemnified, the Council in full 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 been caused by or contributed to by the Council's acts or omissions.

## **10 CONFIDENTIALITY**

- 10.1** Subject to Clause 10.2, each Party shall:



- 10.1.1** treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
  - 10.1.2** not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement.
- 10.2** Notwithstanding Clause 10.1, a Party may disclose Confidential Information which it receives from the other Party:
- 10.2.1** where disclosure is required by the Law or by a court of competent jurisdiction;
  - 10.2.2** to its auditors or for the purposes of regulatory requirements;
  - 10.2.3** on a confidential basis, to its professional advisors;
  - 10.2.4** 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;
  - 10.2.5** where the receiving Party is the Supplier, to the staff on a need to know basis to enable performance of the Supplier's obligations under this Agreement provided that the Supplier shall procure that any staff to whom it discloses Confidential Information pursuant to this Clause 10.2.5 shall observe the Supplier's confidentiality obligations under this Agreement;
  - 10.2.6** where the receiving Party is the Council:
    - (a)** on a confidential basis to the employees, agents, consultants and contractors of the Council;
    - (b)** on a confidential basis to any other central government body, any successor body to a central government body or any company to which the Council transfers or proposes to transfer all or part of any business;
    - (c)** to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
    - (d)** in accordance with Clause 12 (*Freedom of Information*).
- 10.3** The Supplier shall not, and shall take reasonable steps to ensure that the Supplier Personnel do not, make any press announcement or publicise this Agreement or any part of this Agreement in any way, except with the prior written consent of the Council.



## **11 DATA PROTECTION**

- 11.1** The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Supplier is the Processor. The only Processing that the Supplier is authorised to do is listed in Schedule 4 (*Data Processing*) by the Council and may not be determined by the Supplier.
- 11.2** Both Parties shall comply with all applicable requirements of the Data Protection Legislation.
- 11.3** This Clause 11 is in addition to, and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.
- 11.4** Schedule 4 (*Data Processing*) sets out the scope, nature and purpose of Processing by the Supplier, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- 11.5** The Supplier shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation and shall not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.
- 11.6** The Supplier shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any Processing or at any time. Such assistance may, at the discretion of the Council, include:
- 11.6.1** a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 11.6.2** an assessment of the necessity and proportionality of the Processing operations in relation to providing the Services;
  - 11.6.3** an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 11.6.4** the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 11.7** The Supplier shall, in relation to any Personal Data Processed in connection with its obligations under this Agreement:
- 11.7.1** Process that Personal Data only in accordance with Schedule 4 (*Data Processing*), unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Council before Processing the Personal Data unless prohibited by Law;
  - 11.7.2** ensure that it has in place Protective Measures to ensure a level of security appropriate to the risks, including, as appropriate, the measures



referred to in Article 32(1) of the UK GDPR, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of:

- (a) the nature and scope as well as context and purposes of the Personal Data to be protected;
- (b) the harm that might result from a Data Loss Event;
- (c) the state of technological development; and
- (d) the cost of implementing any measures;

**11.7.3** ensure that:

- (a) the Supplier Personnel do not Process Personal Data except in accordance with this Agreement (and in particular Schedule 4 (*Data Processing*));
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
  - (i) are aware of and comply with the Supplier's duties under this clause;
  - (ii) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
  - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and

**11.7.4** not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

- (a) the Council or the Supplier has provided appropriate safeguards in relation to the transfer in accordance with the Data Protection Legislation as determined by the Council;
- (b) the Data Subject has enforceable rights and effective legal remedies;





- 11.10.3** the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 11.10.4** assistance as requested by the Council following any Data Loss Event;
  - 11.10.5** assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.
- 11.11** The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause under the obligation in Articles 28(3)(h) and 30(2) of the UK GDPR. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 11.11.1** the Council determines that the Processing is not occasional;
  - 11.11.2** the Council determines (or the Supplier is aware that) the Processing includes special categories of Personal Data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and/or
  - 11.11.3** the Council determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 11.12** The Supplier shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 11.13** The Supplier shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 11.14** Before allowing any Sub-processor to Process any Personal Data related to this Agreement, the Supplier must:
- 11.14.1** notify the Council in writing of the intended Sub-processor and Processing;
  - 11.14.2** obtain the written consent of the Council;
  - 11.14.3** enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 11.14 such that they apply to the Sub-processor; and
  - 11.14.4** provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 11.15** The Supplier shall remain fully liable for all acts and omissions of any Sub-processor.
- 11.16** The Council may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable Controller to Processor



standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement) per Articles 28(6), 28(7) and 28(8) of the UK GDPR.

- 11.17** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 11.18** The Supplier shall fully indemnify the Council in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses arising out of or in connection with any civil claim made in respect of information subject to the Data Protection Legislation, which claims would not have arisen but for some act, omission or negligence in breach of this condition on the part of the Supplier, its employees, agents or any sub-contractor or anyone acting on its or their behalf.
- 11.19** The Parties agree that on the termination of this Agreement, the Processor and any Sub-Processor shall, at the choice of the Controller, return all Personal Data and copies thereof to the Council or shall destroy all the Personal Data and certify to the Council that it has done so, unless legislation imposed on the data importer prevents it from returning or destroying all or part of the Personal Data transferred. In that case, the data importer warrants that it shall guarantee the confidentiality of the Personal Data transferred and shall not actively Process the Personal Data transferred anymore.
- 11.20** The Supplier shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Processor who may have access to Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know or access the relevant Personal Data, as strictly necessary for the purposes of this Agreement, and to comply with the Data Protection Legislation in the context of that individual's duties to the Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

### **Obligations after the termination of this Agreement**

- 11.21** The Parties agree that on the termination of this Agreement, the Data Processor and any Sub-processor shall, at the choice of the Data Controller, return all the Personal Data transferred and the copies thereof to the Data Controller or shall destroy all the Personal Data and certify to the Data Controller that it has done so, unless legislation imposed on the Data Processor prevents it from returning or destroying all or part of the Personal Data transferred. In that case, the Data Processor warrants that it shall guarantee the confidentiality of the Personal Data transferred and shall not actively Process the Personal Data transferred anymore.
- 11.22** The provisions of Clause 11.21 shall apply during the continuance of this Agreement and indefinitely after its termination or expiry.



## **12 FREEDOM OF INFORMATION**

**12.1** The Supplier acknowledges that the Council is subject to the requirements of the FOIA, EIR, Human Rights Act 1998 (all as amended from time to time) and any codes of practice and best practice guidance issued by the United Kingdom Government and appropriate enforcement agencies. The Supplier shall:

**12.1.1** provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIR;

**12.1.2** transfer to the Council all requests for information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

**12.1.3** provide the Council with a copy of all information belonging to the Council requested in the request for information which is in its possession or control in the form that the Council requires within five (5) Working Days (or such other period as the Council may reasonably specify) of the Council's request for such information; and

**12.1.4** not respond directly to a request for information unless authorised in writing to do so by the Council.

**12.2** The Supplier acknowledges that the Council may be required under the FOIA and EIR to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Supplier. The Council shall take reasonable steps to notify the Supplier of a request for information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Council shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIR.

## **13 AUDIT REQUIREMENTS**

**13.1** The Supplier shall facilitate the Council's compliance with its statutory audit obligations and comply (at its own cost) with any reasonable request from the Council for that purpose. If either the Council's internal or external auditors or if the Local Government Ombudsman wish to investigate this Agreement, then the Supplier shall provide such information, access and cooperation as those persons may reasonably require.

**13.2** Where the Supplier is undertaking Services which involve contact with children and/or vulnerable adults, the Supplier shall ensure that its employees, agents and sub-contractors have been subject to all relevant and appropriate checks with the Disclosure and Barring Service. The Supplier shall monitor the level and validity of the checks required under this Clause 13.2 throughout the provision of the Services.





**13.3** The Council may terminate this Agreement by written notice if the Supplier is in breach of any of the provisions of this Clause 13. No period of notice shall be required but the notice shall state the date on which it is to take effect.

## **14 HEALTH AND SAFETY**

**14.1** The Supplier in providing the Services shall have full regard to the health and safety of persons who may be affected in any way and shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and its subordinate regulatory framework, as well as any other applicable Laws regarding the health and safety of persons.

**14.2** The Supplier shall operate a system of risk assessment, to comply with appropriate health and safety legislation. The Supplier shall provide copies of any risk assessments (or a summary of the said documents if they cannot be released for any justifiable reason) as and when required by the Council.

**14.3** The Supplier shall notify the Council immediately of any incident occurring in the supply of the Services on the Council's premises where that incident causes any personal injury or damage to property which could give rise to a personal injury.

**14.4** Each Party shall promptly notify the other of any health and safety hazards which may arise in connection with the supply of the Services including those which may exist or arise on the Council's premises and which may affect the Supplier in the supply of the Services.

**14.5** While on the Council's premises, the Supplier shall comply with any health and safety measures implemented by the Council in respect of employees and other persons working on such premises.

**14.6** The Council may suspend this Agreement in whole or in part without paying compensation if the Council is reasonably of the opinion that the Supplier is in breach of this Clause 14.

## **15 INDEMNITY AND INSURANCE**

**15.1** Without prejudice to any rights or remedies of the Council, the Supplier shall indemnify and keep indemnified the Council against all liabilities, costs, expenses, damages, losses and matters of any kind arising in contract, tort, statute or otherwise directly or indirectly out of the wrongful act, Default, breach of contract or negligence of the Supplier, its sub-contractors, employees or agents in the course of or in connection with this Agreement.

**15.2** Without prejudice to the generality of the foregoing, this indemnity shall extend to (and not be limited to) death or injury to persons, damage to property, prevention of corruption, the infringement of Intellectual Property rights, health and safety, race relations, data protection and Ombudsman investigations.



**15.3** The Supplier shall at its own cost effect with a reputable insurance company public and employer's liability and other insurances necessary to cover the risks contemplated by this Agreement and shall at the request of the Council produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder. The Supplier shall maintain insurance with the minimum limits of indemnity set out in the Specification (Schedule 3) or in default as specified below:

**15.3.1** Public Liability Insurance – £10 million (each and every incident);

**15.3.2** Employer's Liability Insurance (if applicable) – £5 million (each and every incident);

**15.3.3** Insurance for any of the Supplier's own equipment used for the Services;

**15.3.4** Professional Indemnity Insurance (if applicable) – £5 million (in aggregate for the year with run off cover for not less than 6 years);

**15.3.5** Product Liability Insurance (if applicable) – to be agreed between the Parties.

**15.4** If through any Default of the Supplier, data transmitted or processed in connection with this Agreement is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstruction of that data and shall provide a full credit in respect of any charges levied for its transmission and shall fully indemnify the Council against any costs charged in connection with such Default.

## **16 PREVENTION OF CORRUPTION**

**16.1** The Council may immediately terminate this Agreement and recover in full any loss sustained as a consequence of a breach of this Clause 16, in the event that the Supplier, its employees or anyone acting on the Supplier's behalf does any of the following things:

**16.1.1** offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Supplier does not know what has been done); or

**16.1.2** commit an offence under the Bribery Act 2010 or under section 117(2) of the Local Government Act 1972; or

**16.1.3** commit any fraud in connection with this or any other Council order or contract whether alone or in conjunction with Council members or employees.

**16.2** The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Supplier Personnel and the Supplier (including its shareholders, members and directors) in connection with this Agreement and shall notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.



## **17 TERMINATION**

- 17.1** The Council may exercise the option to terminate this Agreement in whole or in part (and where applicable enter upon and expel the Supplier from any premises or site to which it has been given access) by written notice if any of the events specified in Clause 17.2 occur. No period of notice shall be required but the notice shall state the date on which it is to take effect.
- 17.2** The events referred to in Clause 17.1 are:
- 17.2.1** the Supplier breaches this Agreement in a way which the Council reasonably regards as irremediable, which may include, without limitation, fundamental breach or repeated and/or persistent remediable breaches of this Agreement;
  - 17.2.2** the Council gives the Supplier reasonable notice to remedy a breach of contract which can be remedied and the Supplier fails to do so;
  - 17.2.3** the Supplier without reasonable cause fails to proceed diligently with or wholly suspends performance of any activity under this Agreement;
  - 17.2.4** an insolvency event takes place such as an order or a resolution is passed for the winding up of the Supplier, an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or the Supplier makes a composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this Clause 17.2.4) in consequence of debt in any jurisdiction;
  - 17.2.5** if the Supplier is an individual, the Supplier makes an arrangement with creditors or is declared bankrupt or adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or dies;
  - 17.2.6** the Supplier undergoes a change of control within section 1124 of the Corporation Tax Act 2010.
- 17.3** The Supplier shall notify the Council as soon as practicable of any change of control as referred to in Clause 17.2.6 or any potential such change of control.
- 17.4** The Council may immediately terminate this Agreement as per Clause 8 (*Cancellation*).
- 17.5** Notwithstanding the provisions of Clause 17.2, the Council shall have the right to terminate this Agreement at any time, for any reason by giving thirty (30) days' written notice.
- 17.6** On termination or expiry of this Agreement, the Supplier shall:



- 17.6.1** give all reasonable assistance to the Council and any incoming supplier of Services; and
- 17.6.2** return all requested documents, information and data to the Council as soon as reasonably practicable.
- 17.7** In the event of termination of this Agreement, the Council may engage another contractor to supply the Services and the Supplier shall be liable to pay the Council as a debt any extra cost that the Council incurs in so doing in excess of the total value of this Agreement.
- 17.8** The termination or expiry of this Agreement, for whatever reason, shall not affect any provisions or clauses capable of surviving or operating in the event of termination. Termination of this Agreement shall be without prejudice to the rights and remedies of one Party against the other.
- 18 DISPUTE RESOLUTION**
- 18.1** The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 18.2** If the dispute cannot be resolved between the Parties within a month of referral as set out in Clause 18.1, then at the instance of either Party the dispute shall be referred to mediation in accordance with the Centre for Effective Dispute Resolution (“**CEDR**”) Model Mediation Procedure.
- 18.3** To initiate the mediation, either Party may give notice in writing to the other requesting mediation in accordance with this clause. The initiating Party shall send a copy of such request to the CEDR. All negotiations connected with the dispute shall be conducted without prejudice to the rights of the Parties in any further proceedings.
- 18.4** If there is any issue concerning the conduct of the mediation (including the nomination of the mediator) on which the Parties cannot agree within a reasonable time, CEDR shall, at the request of either Party, decide the issue.
- 18.5** If the dispute is not resolved within ninety (90) days of the mediation being initiated or if either Party does not participate in the mediation, either Party may commence court proceedings.
- 19 FORCE MAJEURE**
- 19.1** Neither party shall be in breach of this Agreement or liable for delay in performing or liable for failing to perform any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event or any other events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for more than thirty (30) days, the party not affected may terminate this Agreement by giving written notice to the affected party.



**19.2** Notwithstanding Clause 19.1 above, each Party shall put in place a contingency plan to avoid, where reasonably possible, being prevented from performing its obligations under this Agreement by a Force Majeure Event, shall notify the other party of the Force Majeure Event promptly and shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

## **20 ASSIGNMENT AND SUB-CONTRACTING**

**20.1** The Supplier shall not without the written consent of the Council assign or sub-contract the benefit or burden of the whole or any part of this Agreement. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal.

**20.2** No sub-contracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under this Agreement. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

**20.3** Where the Council has consented to the placing of sub-contracts, the Supplier shall, at the request of the Council, send copies of each sub-contract, to the Council as soon as reasonably practicable.

**20.4** The Council may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Agreement and the Supplier shall, at the Council's request, enter into a novation agreement in such form as the Council shall reasonably specify in order to enable the Council to exercise its rights pursuant to this Clause 20.4.

## **21 PURCHASE OUTSIDE THIS AGREEMENT**

The Council shall have the right to employ a person or company other than the Supplier to make supplies of the same type as is contemplated by this Agreement if it shall in its absolute discretion think fit to do so.

## **22 THIRD PARTY RIGHTS**

No one other than a Party to this Agreement shall have any right to enforce any of its terms, without the prior written agreement of the Parties.

## **23 NO AGENCY, EMPLOYMENT OR PARTNERSHIP**

Nothing in this Agreement shall be construed as creating a legal partnership or a contract of employment or a relationship of principal and agent between the Council and the Supplier and the Supplier shall not at any time or under any circumstances take any action so as to bind (or purport to bind) the Council, nor shall the Supplier hold itself out as having authority to bind the Council and the Council shall ensure that its employees and agents do not hold themselves out likewise.



## **24 WAIVER**

Failure by the Council at any time to enforce the provisions of this Agreement shall not be construed as a waiver of the right of the Council to enforce any provision in accordance with its terms.

## **25 PUBLICITY**

The Supplier shall seek written approval from the Council prior to the publication of any publicity where the Council is acknowledged.

## **26 NOTICES**

**26.1** Any notice to be given under this Agreement shall be in writing and may be served by personal delivery, pre-paid first class post or other next Working Day delivery service, commercial courier or, subject to Clause 26.3, email to the address of the relevant Party set out in the Agreement Details, or such other address which that Party may from time to time notify to the other Party in accordance with this clause.

**26.2** Notices serviced as above shall be deemed served on the Working Day of delivery provided delivery is before 5:00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

**26.3** Notices under Clause 17 (*Termination*) and Clause 19 (*Force Majeure*) may be serviced by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in Clause 26.1.

## **27 VARIATION**

This Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

## **28 ENTIRE AGREEMENT**

This Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

## **29 SEVERABILITY**

**29.1** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

**29.2** If any provision or part-provision of this Agreement is deemed deleted under Clause 29.1, the Parties shall negotiate in good faith to agree a replacement



provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **30 PUBLICATION OF EXPENDITURE**

- 30.1** The Supplier is advised that local authorities are required by the Government to publish details of every item of expenditure that exceeds £500 and details of each invitation to tender (for contracts to provide goods or services) with a value of £5,000 or more.
- 30.2** The Supplier is advised that the Council may therefore publish details (to the extent and in the manner required by the Government) of the tender process and any contract awarded.
- 30.3** The Supplier must comply with any reasonable request from the Council in order to assist the Council in complying with its obligations in respect of this requirement.

### **31 COMPLIANCE**

In performing this Agreement, the Supplier shall comply with the Council's Financial Regulations and Procurement Rules. Where the Supplier purchases goods, works or services on behalf of the Council in the course of providing the Services under this Agreement, it shall comply with all applicable public procurement legislation, the Public Contracts Regulations 2015 and the Council's policies and procedures. The Supplier shall ensure that the Council receives the benefit of all guarantees and warranties provided by any such suppliers of goods, works or services.

### **32 THE COUNCIL AS A LOCAL AUTHORITY**

Nothing in this Agreement shall prejudice, override, modify or in any other way affect the rights, powers, duties and obligations of the Council in the exercise of its statutory powers as a local authority, local planning authority, highway authority, fire authority or statutory undertaker.

### **33 COUNTERPARTS**

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

### **34 GOVERNING LAW**

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



## **35 JURISDICTION**

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

This Agreement has been entered into on the date stated at the beginning of Schedule 1 (*Agreement Details and Signature Page*) .