

DATED

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FALMOUTH TOWN COUNCIL

and

**[INSERT SUCCESSFUL APPLICANT'S NAME]**

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**Agreement for the provision of Insurance Services**

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## CONTENTS

### PARTIES

1. **FALMOUTH TOWN COUNCIL** of The Old Post Office, The Moor, Falmouth, TR11 3QA (the “Council”); AND
2. **[INSERT NAME OF SUCCESSFUL TENDERER]** (Registered Company Number: **[Insert Number]** of **[Insert Registered Address]** (the “Insurer”)

### WHEREAS:

- A. The Council issued a Request for Quotation for the provision of Insurance Services: and
- B. The Insurer submitted the most economically advantageous bid in respect of that Request for Quotations and was asked to issue a Policy of Insurance: and
- C. The Council requires additional terms to those set out in the Policy of Insurance as set out in clause 1 to 12 of this Agreement to supplement the terms of that Policy.

Now this Agreement witnesses as follows:

#### 1. Definitions and Interpretation

- a. In this Agreement the following definitions shall apply in addition to those defined in the Policy:

<b>Authorised Representative</b>	means the persons respectively designated as such by the Authority and the Service Provider.
<b>Commencement Date</b>	means the date of commencement of the Insurance Policy.
<b>Commercially Sensitive Information</b>	means the information of a commercially sensitive nature relating to the Service Provider, its intellectual property rights or its business or which the Service Provider has indicated to the Authority that, if disclosed by the Authority, would cause the Service Provider significant commercial disadvantage or material financial loss.
<b>Controller</b>	shall be given the meaning provided in the GDPR.
<b>Data Protection Laws</b>	means the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, Regulation (EU) 2016/679 known as the General Data Protection Regulation ( <b>GDPR</b> ), and the Data Protection Act 2018 as each of the foregoing may be amended, replaced or re-enacted from time to time and all applicable laws and regulations relating to the processing of Personal Data and privacy including, where applicable, the mandatory guidance and codes of practice issued by the ICO or other relevant supervisory authority and the equivalent of any of the foregoing in any relevant jurisdiction.

<b>EIRs</b>	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
<b>FOIA</b>	the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
<b>Information</b>	has the meaning given under section 84 of FOIA.
<b>Insurer's Personnel</b>	means all employees, staff, other workers, agents and consultants of the Insurer and of any sub-contractors who are engaged in the provision of the services from time to time.
<b>Law</b>	means any legal provision the Service Provider must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, whether in the UK or elsewhere.
<b>Personal Data</b>	shall be given the meaning provided in the GDPR.
<b>Policy</b>	the Policy of insurance set out as Schedule 1 to this Agreement.
<b>Processor</b>	shall be given the meaning provided in the GDPR.
<b>Prohibited Act</b>	<ul style="list-style-type: none"> <li>a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity in relation to obtaining this agreement or any other contract with the Service Provider;</li> <li>b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Terms;</li> <li>c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority;</li> <li>d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.</li> </ul>

<b>Request for Information</b>	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
<b>Term</b>	means a period of three [3] years
<b>Working Days</b>	means Monday to Friday, excluding any public holidays in England and Wales.

- b. If there is any conflict or inconsistency between the provisions in the terms, such conflict or inconsistency shall be resolved according to the following order of priority:
  - i. The clauses of these additional terms as appended to the insurance policy; then
  - ii. The main clauses of the insurance policy; then
  - iii. The remaining schedules to the insurance policy

## 2. Agreement

- a. The Policy of Insurance and attached endorsements numbered [REDACTED], a copy of which is set out as Schedule 1 to this Agreement shall be the primary agreement regarding the insurances required.
- b. The terms and conditions set out in this Agreement shall apply only insofar as they are not subject to a term or condition of that Policy as endorsed either as at the date of this Agreement or at any time before the expiry of the Policy. Nothing in clauses 1 to 12 shall affect the terms of the Policy of Insurance.

## 3. Prevention Of Bribery

- a. The Insurer represents and warrants that neither it, nor to the best of its knowledge any of its personnel, have at any time prior to the Commencement Date committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act.
- b. The Insurer shall not:
  - i. commit a Prohibited Act; and/or
  - ii. do or suffer anything to be done which would cause the Council or any of the its employees, servants or agents to contravene any provision of the Bribery Act 2010 or otherwise incur any liability in relation to the bribery act 2010.
- c. The Insurer shall:
  - i. establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act 2010 and prevent the occurrence of a Prohibited Act; and
  - ii. keep appropriate records of its compliance with its obligations under clause 3(c)(i) and make such records available to the Council on request;
  - iii. immediately notify the Council in writing if it becomes aware of any breach of this clause, or has reason to believe that it has or any of the Insurer's

personnel have been subject to an investigation or prosecution which relates to an alleged Prohibited Act.

- d. If the Insurer notifies the Council in accordance with this clause the Insurer shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow it to audit any books, records and/or any other relevant documents.
- e. Any breach of this Clause 3 shall entitle the Council to terminate the Agreement on giving one month's notice of such termination.

#### **4. Freedom of Information**

- a. The Insurer acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Insurer shall:
  - i. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the it to comply with its Information disclosure obligations under the FOIA and EIRs;
  - ii. transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - iii. provide the Council with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority 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
  - iv. not respond directly to a Request for Information unless authorised in writing to do so by the Council.
- b. The Insurer acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Insurer. The Council shall take reasonable steps to notify the Insurer of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 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 EIRs.

#### **5. Data Protection Obligations**

- a. The obligations in clauses 5(b) to 5(g) below apply regardless of whether the Insurer is a separate data Controller, a joint Data Controller with the Council or a Data Processor on behalf of the Council.
- b. The Council and the Insurer shall comply with their respective obligations under Data Protection Laws.
- c. The Insurer shall assist the Council to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the Council to breach any of the its obligations under the Data Protection Laws.

- d. The Insurer shall (and shall procure that all of its Staff) comply with any notification requirements under the Data Protection Laws.
- e. The Insurer shall ensure that its staff are appropriately trained to handle and process Personal Data in accordance with this Agreement and have committed themselves to, or are under an appropriate statutory duty of, confidentiality.
- f. The Insurer will upon request provide the Council with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under this Agreement.
- g. The Insurer shall not process or otherwise transfer any Personal Data in or to any third country unless and until it has satisfied itself and the Council that adequate safeguards and an adequate level of protection are in place to transfer the Personal Data in accordance with the Data Protection Laws.
- h. The Insurer shall not engage a Processor (or a sub-processor, where the Insurer acts as Processor) to process any Personal Data unless the Insurer has obtained the prior written authorisation of the Council and has entered into a written contract with the Processor or sub-processor including as a minimum substantially similar obligations to those set out in this Agreement. Where the Insurer engages any Processor or sub-processor, it shall remain liable to the Council for that Processor or sub-processor's compliance with the Data Protection Laws in respect of any Personal Data provided to the Insurer by the Council.
- i. The Insurer will notify the Council immediately and in any event no later than twelve (12) hours, after becoming aware of a Personal Data Breach. In particular the Insurer will:
  - i. when notifying the Council of a Personal Data breach, describe the nature of the event including the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
  - ii. cooperate fully with any Council investigation into the Personal Data breach including, but not limited to, the causes and effects (actual or potential);
  - iii. provide immediate access to such of the Insurer's premises and systems as are appropriate for the purposes of any Council investigation or audit being conducted under this Agreement and contribute to such investigation or audit where reasonably required by the Council;
  - iv. take all necessary actions to remedy the causes of the Personal Data Breach and to ensure the protection of Personal Data from any further loss;
  - v. not make any public statement of any kind without the prior approval of the Council;
  - vi. provide all assistance necessary to enable the Council to fulfil its obligations to notify the Information Commissioner within seventy two (72) hours after becoming aware of the Personal Data Breach and/or to notify affected Data Subjects if required; and/or
  - vii. take all steps required to fulfil the Insurer's own obligation to notify the Information Commissioner within seventy two (72) hours of the Insurer

becoming aware of the Personal Data Breach and/or to notify affected data subjects if required;

- viii. The Insurer shall keep a record of any Processing of Personal Data it carries out in connection with this Agreement, including without limitation the records specified in Article 30 of the GDPR, and shall provide a copy of such records to the Council on request.
  - ix. The Council shall be entitled, on giving reasonable notice to the Insurer, and the Insurer shall permit the Council to inspect or appoint representatives to inspect: all facilities, equipment, documents and electronic data relating to the Processing of Personal Data by the Insurer in connection with this Agreement. Any requirement to give notice shall not apply if the Council reasonably believes that the Insurer is in breach of any of its obligations under this Agreement or the Data Protection Laws in relation to Personal Data processed in connection with this Agreement.
  - x. Upon request, the Insurer shall provide to the Council all information necessary to demonstrate compliance with the obligations provided in this clause.
  - xi. Upon request, the Insurer shall allow the Information Commissioner's Office and its representatives access to the Insurer's premises, records and personnel for the purposes of assessing the Insurer's compliance with this Agreement and the Data Protection Laws.
  - xii. The Insurer will provide all reasonable assistance required by the Council to enable the Council to comply with any obligations arising under any applicable Law, including, but not limited to, implementing or otherwise giving effect to the Security of Network and Information Systems Directive (as amended or replaced from time to time), including by making any changes to the technical and organisational security measures.
- j. When acting as a Processor, the Insurer shall:
- i. only process the Personal Data provided by the Council in accordance with the documented instructions of the Council and immediately inform it if, in its opinion, an instruction infringes this clause or any Data Protection Laws;
  - ii. set out the subject matter, duration of the processing, nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller as an appendix to the contract which requires such processing; and
  - iii. immediately upon the termination or expiry of this Agreement (or any part thereof) the Insurer shall cease processing the Personal Data (or any part thereof, as applicable) (except as necessary to comply with this Agreement or an obligation under any Law), and as soon as reasonably practicable thereafter, at the Council's option (to be exercised without undue delay), either (i) securely return to the Council or securely transfer to a new Insurer; or (ii) securely delete from its systems (so that the Personal Data cannot reasonably be recovered or reconstructed), the Personal Data and any copies of it or the information it contains.
  - iv. For the avoidance of doubt the Insurer may retain any Personal Data which may be required to deal with any potential claim under the Policy where the Limitation Period under the Limitation Act 1980 may extend beyond the

termination or expiry of the Policy and for which the Insurer may remain liable to meet a claim against the Council.

## **6. Equal Opportunities**

- a. In performing its obligations under this Agreement, the Insurer shall to the same extent as if it were a public authority within the meaning of the Equality Act 2010 (2010 Act) (or any European equivalent) comply with the 2010 Act together with all applicable amendments, regulations and codes of practice or any future or other legislation which concerns discrimination in employment and service delivery (Equalities Provisions) and shall in particular comply with the public sector equality duty under section 149 and shall have due regard to the need to;
  - i. eliminate discrimination (whether direct or indirect), harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
  - ii. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - iii. foster good relations between persons who share a relevant protected characteristic and persons who do not share it;
- b. The Insurer shall take all reasonable steps to ensure that its Personnel employed in the provision of the services shall carry out the services in accordance with the obligations imposed on the Service Provider by clause 6(a).
- c. Where in connection with this Agreement, the Insurer and its Personnel engaged are required to provide to work on the Council's premises where the Council's employees are required to carry out work, the Insurer shall comply with the Council's own policies and codes of practice relating to equal opportunities, copies of which may be obtained from the Council upon request.
- d. The Insurer shall notify the Council immediately in writing upon becoming aware of any investigation or proceedings brought against the Insurer under the Equalities Provisions.
- e. If requested to do so by the Council, the Insurer shall fully co-operate with the Council, at its own expense, in connection with any legal proceedings, ombudsman inquiries or arbitration in which the Council may become involved arising from any breach of the Council's duties under the Equalities Provisions due to the alleged acts or omissions of the Insurer or its Personnel arising from this Agreement.

## **7. Human Rights**

- a. The Insurer shall ensure that carries out its obligations under this Agreement in compliance with the provisions of the Human Rights Act 1998 (HRA)
- b. The Insurer shall indemnify the Authority in respect of any cost claim or damages that the Authority may incur in respect of any breach or contravention of the HRA arising out of any act or omission on the part of the Insurer its employees agents or sub-contractor in respect of this Agreement.

## **8. Waiver**



Failure by the Council at any time to enforce the provisions of this Agreement or to require performance by the Insurer of any of its provisions shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of this Agreement or any part thereof or the right of the Council to enforce any provision in accordance with its terms

## **9. Severability**

- a. 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 the Agreement.
- b. If any provision or part-provision of this Agreement is deemed deleted under clause 9(a) 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.

## **10. Partnership or Agency**

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

## **11. Publicity**

- a. The Insurer shall not:
  - i. make any press announcements or publicise this Agreement or their contents in any way; or
  - ii. use the Council's name or logo in any promotion or marketing or announcement of orders, except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Council, which shall not be unreasonably withheld or delayed.

## **12. Notices**

- a. Any notice given to a party under or in connection with this Agreement shall be in writing marked for the attention of the party's Authorised Representative and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);
- b. Any notice shall be deemed to have been received:
  - i. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
  - ii. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.
- c. For the avoidance of doubt any notice purportedly sent by email shall be void and of no effect.

Executed by the Parties on the day and date first set out above:

Signed: .....  
(For and on Behalf of the Council)  
Position: .....

Signed: .....  
(For and on Behalf of the Insurer)  
Position: .....